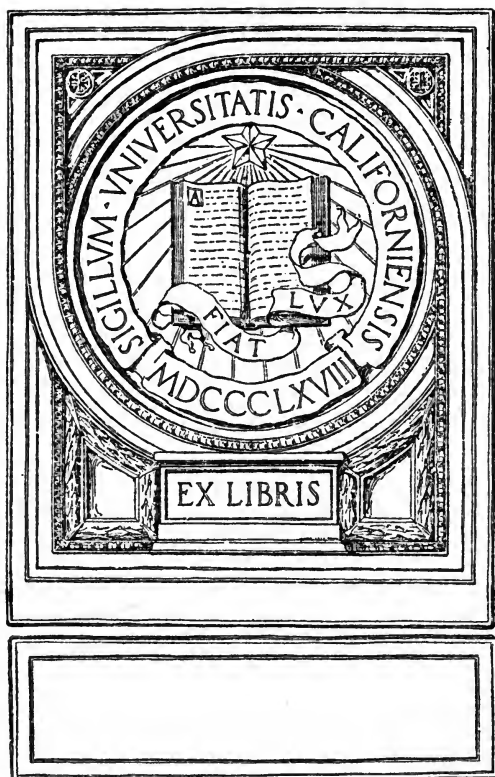
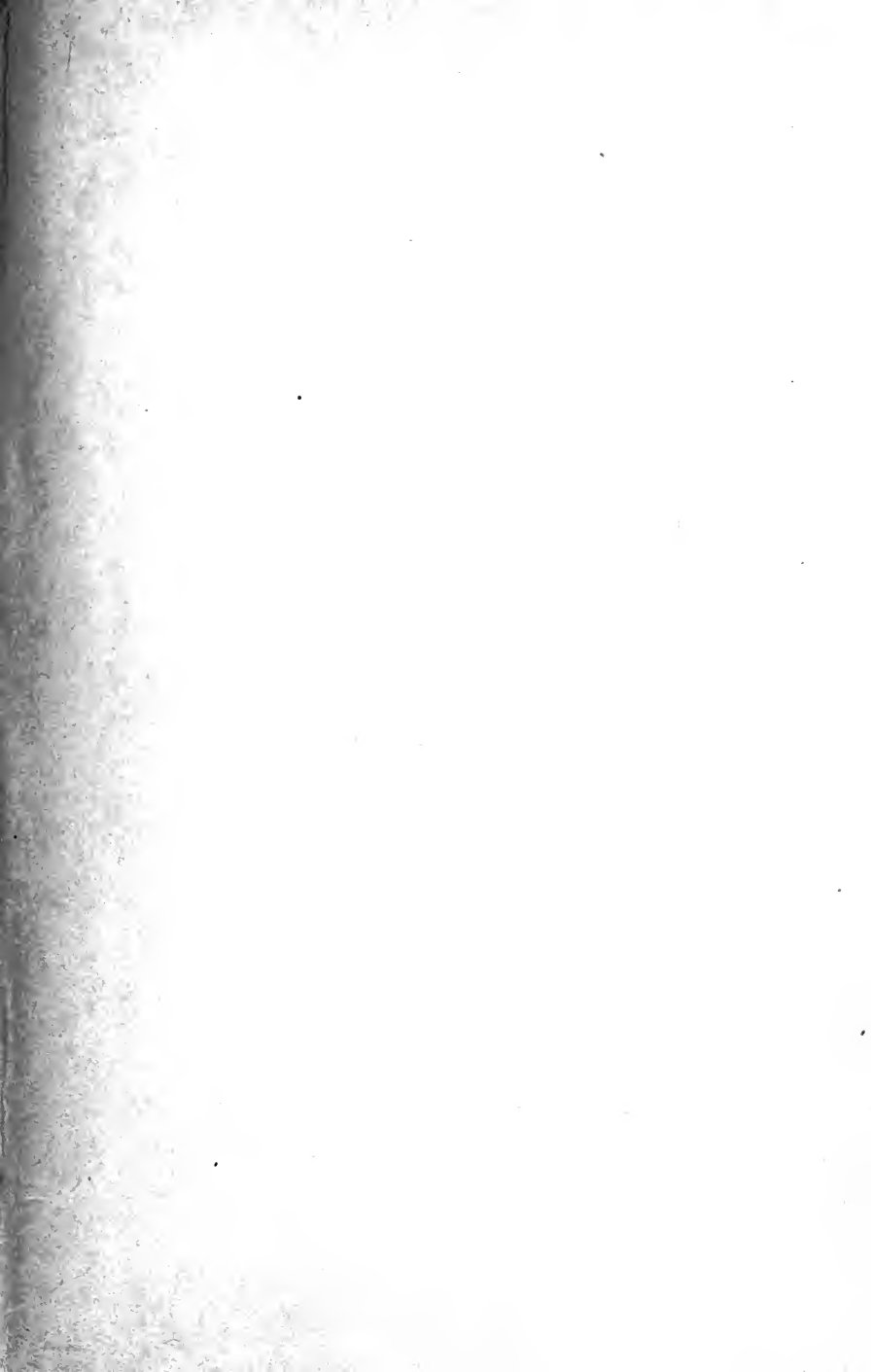


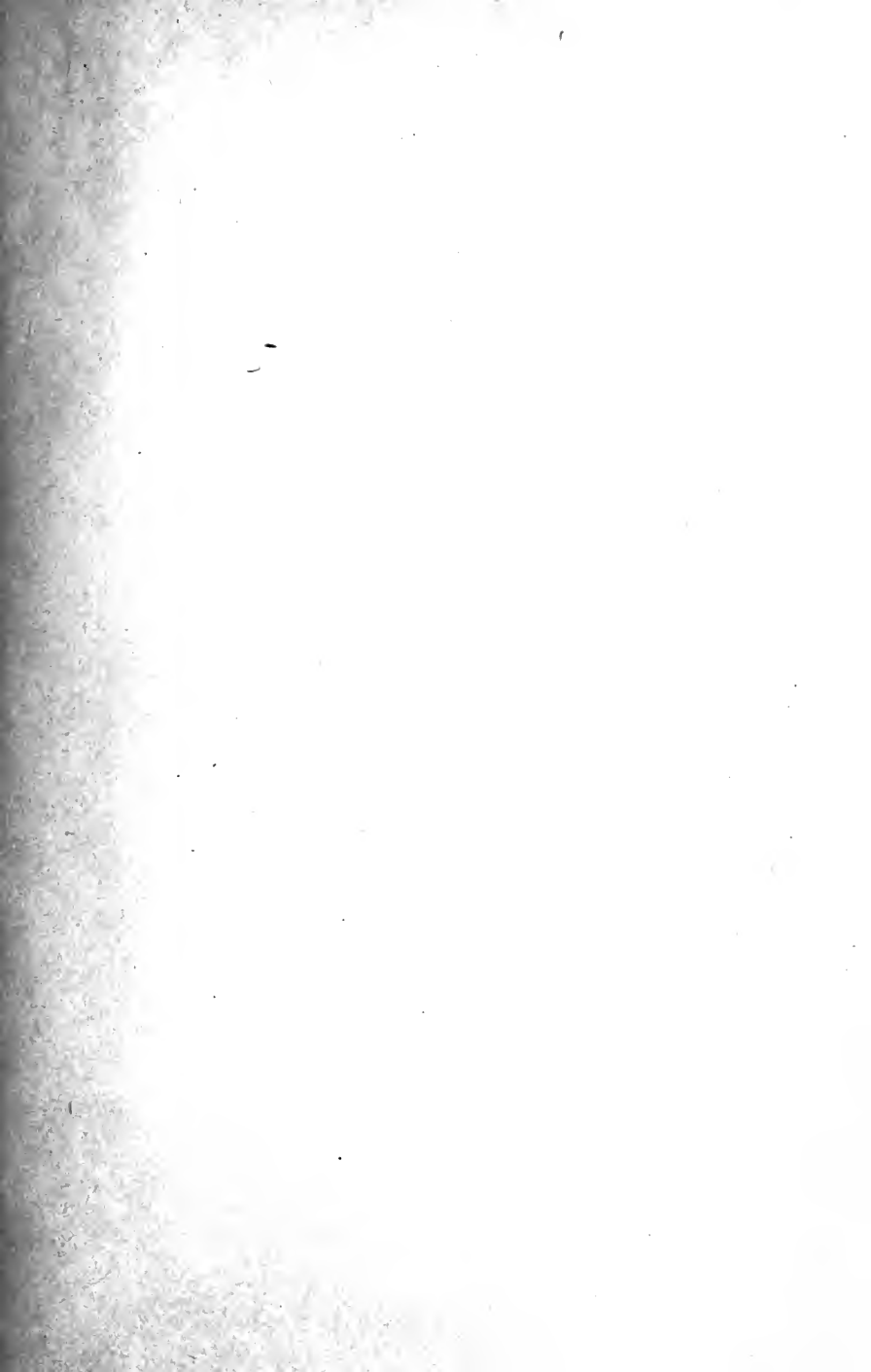
The
American
Business
Woman

Cromwell





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THE AMERICAN BUSINESS WOMAN

A GUIDE FOR THE INVESTMENT, PRESERVATION, AND
ACCUMULATION OF PROPERTY; CONTAINING
FULL EXPLANATIONS AND ILLUSTRATIONS
OF ALL NECESSARY METHODS
OF BUSINESS

BY

JOHN HOWARD CROMWELL, PH.B., LL.B.
COUNSELLOR-AT-LAW

Second Revised Edition

CALIFORNIA

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JOHN H. CROMWELL
For Second, Revised, Edition

TO MR. J. H. CROMWELL
ALBANY, N. Y.

The Knickerbocker Press, New York

TO THAT GENUINE AMERICAN LADY
THE BEST WOMAN I HAVE EVER KNOWN—MY MOTHER
THIS WORK IS LOVINGLY DEDICATED



PREFACE TO THE REVISED EDITION

THE favorable reception which *The American Business Woman* has received has made desirable a continuation of its publication after having been before the public for a period of ten years. The changes which the years have made in the laws and customs affecting some of the subjects considered, and the propriety of including in the new edition some subjects which were not considered at all in the previous editions, have made it necessary to revise and alter the work to a considerable extent.

In preparing the revised edition I have found that the changes above referred to have been, and doubtless will continue to be, so frequent that an attempt to keep up with them in detail would necessitate a revision of *The American Business Woman* at least once a year. In the present edition, therefore, I have sought to generalize to a greater extent the subjects which are involved, thus lessening the probabilities of misleading any one, and leaving it to the reader to seek, if necessary, more specific knowledge in manners which have been, in all cases, suggested.

vi Preface to the Revised Edition

Since the first publication of *The American Business Woman* I have received letters from women prominent in the medical and journalistic professions; from women in other professions and business occupations; and from women who are actively engaged in the investment and preservation of their property — letters referring, without exception, most favorably to *The American Business Woman*, and in some cases suggesting additions which, in the opinions of the writers, ought to be included in subsequent editions. I desire now to thank these successful American business women for their generous appreciation of my labors, and to say that every suggestion made by them (with the exception of one, which would have increased the size of the book very materially) has been adopted in the present edition.

I trust also that I may be pardoned if I refer here to the fact that, although reviews of *The American Business Woman* published in more than half a hundred newspapers and periodicals in the United States and England have been brought to my notice, not a single one has failed to give to the book a generous and flattering commendation. For this unusual consideration and courtesy I desire to express my sincere appreciation.

The material changes in the present revised edition, both in the subject-matter itself and in

Preface to the Revised Edition vii

the style and arrangement of the book, which will be at once remarked by readers of the previous editions, have been made, with some hesitation, and not without a very careful consideration. I earnestly trust that these changes will be for the improvement of the work and for the better accomplishment of the purposes for which it was written.

J. H. C.

NEW YORK, February 1, 1910.

PREFACE TO THE FIRST EDITION

IN my experience as a practising lawyer, no one fact has been more strongly impressed upon me than that the majority of American women are almost entirely ignorant of the ordinary rules and methods of business. In my practice many of my clients have been women, and, of these, I can recall but one whose acquaintance with regular business methods would, among men, be considered even ordinary; she (now a grandmother) was brought up almost from childhood to a business which she, until quite recently, successfully pursued.

This lack of knowledge among women is not due to any natural deficiency. We cannot reasonably look for a contrary state of affairs when we reflect that for ages women have been trained and educated in almost everything except the principles of business, and have been instructed, if not compelled, to leave all matters of business to their fathers, husbands, or brothers.

The condition is, however, none the less lamentable. Many a woman who has been left in comfortable circumstances by her deceased father or husband, has been reduced to poverty and want

because, through lack of education in matters of business, she has been compelled to rely upon the judgment of others, whose advice, although perhaps honestly given, has been the worst possible. And many a woman who ought to have been in independent circumstances during her entire lifetime, has come to an old age of poverty because of her inability to protect herself against that army of rascals to which a defenceless woman of means presents a golden opportunity.

Realizing both the necessities and the possibilities in the premises, my purpose in offering to the public this volume is to furnish, for the women of my country, as perfect an instruction as I am able to give in all things relating to their pecuniary affairs which I conceive to be for their interest and welfare.

I have endeavored to make this work as simple and explicit as the complicated nature of some essential subjects will permit, believing it to be far better that some shall read over statements with which they are already familiar, than that others shall seek necessary information and shall not be able to find it.

I have also endeavored to avoid the needless exposition of legal principles, which are, however, so closely connected with all the affairs of property as to make their entire avoidance a practical impossibility. Whenever it has been deemed necessary to explain legal principles and methods,

I have undertaken to strip the explanations of verbiage, and to bring them within the easy comprehension of all to whom they may be of service.

Finally, this work is not intended to be in any wise an aid to the avaricious. It contains no explanations of schemes for the rapid making of fortunes; no hints for the benefit of speculators. The instructions which will be found in the following pages are intended for those who need instruction in legitimate and proper methods of managing property—methods which will yield as large returns as are proper and consistent with other essential conditions, yet which are, above all other considerations, and in all respects, capable of employment without unreasonable difficulty and without risk.

J. H. C.

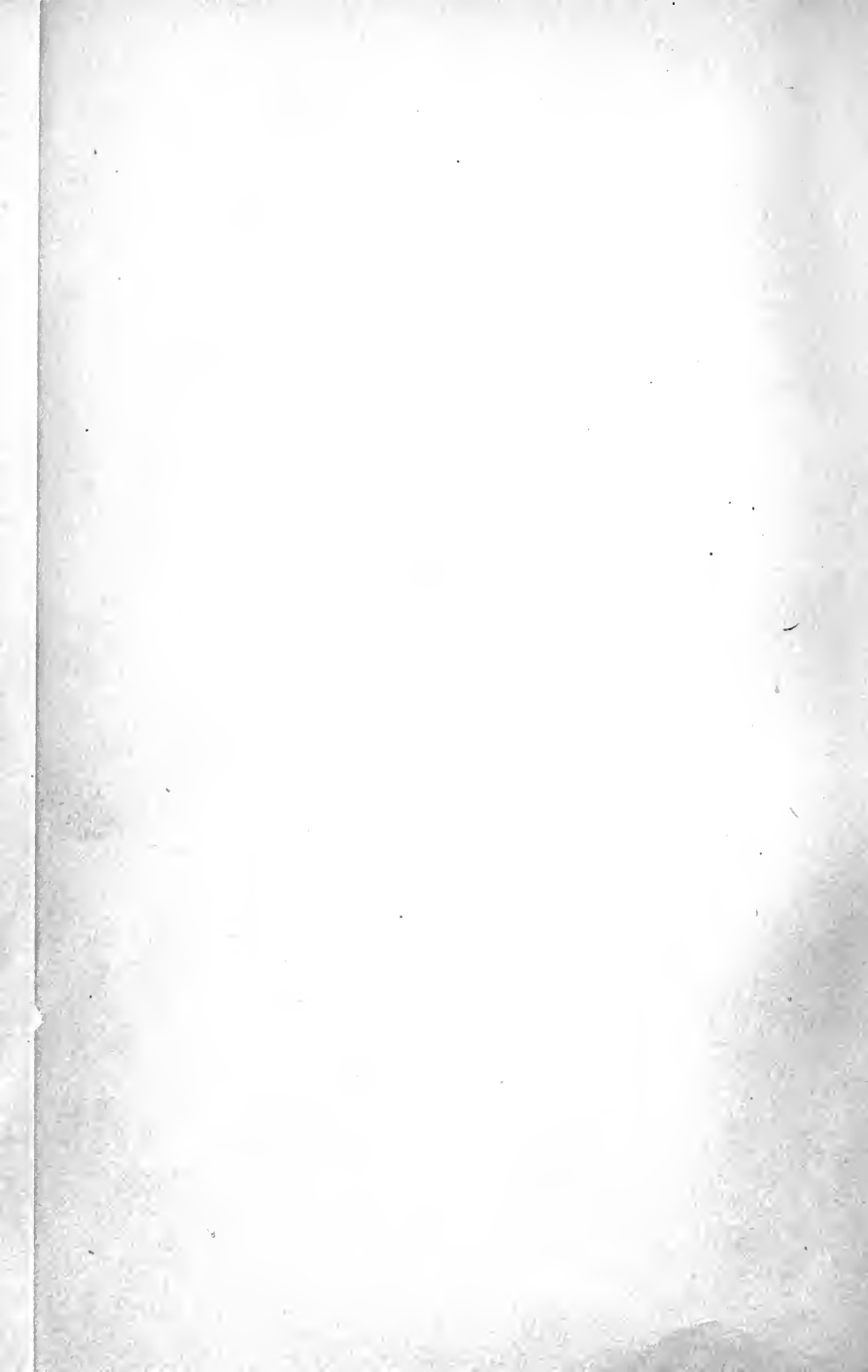
NEW YORK CITY, January 1, 1900.

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THE AMERICAN
BUSINESS WOMAN



THE AMERICAN BUSINESS WOMAN

CHAPTER I

INTRODUCTION—VALUE OF MONEY—INCOME AND EXPENDITURE—PRINCIPAL AND INCOME

“**M**ONEY was made to spend,” is the often-repeated adage of the fool; but the wise man knows that the value of money lies in its possession—in the strength and security it affords—in the blessings and benefits which it provides. So the former squanders his property, very often dies early and in poverty, and leaves those whom nature has made dependent upon him to battle against a poverty and distress for which they are unprepared, and which they should not have been called upon to endure; while the latter enjoys continually more and more the comforts and wholesome pleasures of life, often to an honored old age, and leaves those who are dear to his heart safe against all the ills of poverty and want. Few

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courses of life can be sadder than the one, few more praiseworthy and honorable than the other.

The great problem of ages has been, "How shall we *get* money?" Equally great and important is another problem,—“How shall we *keep* what we already have?” or, with an extended significance, how can we so arrange our affairs that we, our children, and their children cannot possibly come to want?

INCOME AND EXPENDITURE.—The first and fundamental rule, as well for the preservation as for the accumulation of property, is that we shall, at all times, live well within our incomes, or, in other words, that we shall lay by certain portions of our incomes regularly each year. This principle applies equally to persons of ample means who seek merely to preserve what is already possessed, and to persons in humble conditions who strive providently to acquire protection against the ills and incapacity of old age. It follows from the universal truth that in this life there can be no standing still, that we must either continually advance or continually recede, either increase or diminish steadily our fortunes.

The disposition to save money, when properly governed,—a reasonable spirit of frugality,—must be regarded as a virtue. It presupposes self-denial and self-government, and gives birth to and nurtures consequential virtues, which are

both numerous and excellent. The spendthrift is necessarily selfish, indolent, reckless, unreliable, and often dishonest, lawless, and depraved; but the frugal man is unselfish, industrious, steady, and more often than otherwise honest, law-abiding, and trustworthy. Even that exponent of a deranged type of mankind whose craze permits of no intermediate position, the miser, is a quiet, peaceful, law-abiding citizen.

But aside from such general considerations, there are practical reasons of the highest importance for the necessity of this fundamental rule. Unexpected misfortunes, unlooked-for expenditures, the constantly diminishing value of money regarded as a loan, the uncertainties of income derived from the safest and most permanent kinds of investments,—these possibilities require our utmost care and apprehension, and we are indeed in dangerous condition if we are not in some measure prepared to meet them when they come.

Less than a quarter of a century ago, little difficulty was to be encountered in loaning money on the security of first-class mortgages in certain vicinities at an interest of seven per cent. per annum, and there was little or no loss from idle capital waiting for investment; while at the present time really first-class loans in the same vicinities are difficult to make at an interest of five per cent. per annum, and there is considerable loss from idleness. Briefly it may be said, and in

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general, that the percentage of actual returns from such loans has, within a score of years, decreased from seven to about four and one half. Suppose that a certain person was, twenty years ago, possessed of a property of fifty thousand dollars, all of which was invested in mortgage-securities. The annual income from this property would have been thirty-five hundred dollars, while at the present time it would not be more than \$2250. If, during the twenty years, the entire income from the property had been consumed, the foolish and improvident person would now bemoan the loss of about one third of her income in addition to the necessity of contemplating a possible repetition of the cruel process. On the other hand, if this person had, during the twenty years, wisely allowed herself an annual expenditure of two thousand dollars only, carefully preserving and investing the balance of her income, her original property of fifty thousand dollars would have increased to about eighty-five thousand dollars, and her annual income, at the low rate of four and one half per cent. interest, would now amount to \$3825—an increase of nearly ten per cent. over the original income, notwithstanding the great decrease in the rate of interest.

As nearly as can be estimated, the net returns from first class investments generally in the older civilized portions of the world are not materially greater than three per cent. per annum. Our

own country is rapidly growing old, and we must look forward to the inevitable result, *i. e.*, a decrease in the percentages of incomes from investments. Computing from the best available data, we may conclude that the extent of decrease in our incomes for which we must eventually provide will be equal to about one third of the incomes. It follows generally that all persons who, in our times and country, shall regularly consume more than two thirds of their incomes are surely travelling upon the road to poverty.

EXPENSE-ACCOUNT.—In order that we may live within our incomes it is necessary that we shall know very nearly the exact amounts of our incomes and expenditures, and for this purpose the keeping of careful accounts of all receipts and disbursements is indispensable. An ordinary account-book, ruled on the left of each page with one column for the dates and on the right with three columns for thousands, hundreds, and cents respectively, will be sufficient for the purposes of the account. Omitting the first page, the account should be started on the second page, in order that the pages which are devoted to receipts shall be opposite the pages for disbursements for corresponding dates. All receipts (of income only, no part of the principal being considered in this account) should be put down, with brief descriptions and dates, upon the left hand pages and all

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expenditures of income, with their proper dates and descriptions, are similarly to be put down upon the right hand pages.

When a page of expenditures has been entirely filled (there being usually many more entries of expenditures than of receipts), a line should be drawn across the unused part of the page of receipts, from under the last figures downward to the foot of the page, to indicate that the entries on the page are complete; the sums of the columns of receipts and expenditures should then be put down under lines drawn below the respective columns, and also carried forward to the tops of the next corresponding pages, the left-hand pages being used for receipts, and the right-hand pages for expenditures. When adding the columns of the pages, the amounts which have been carried forward from the preceding pages must, of course, be included, in order that the sum at the foot of each page shall show the total amount of receipts or expenditures, instead of merely the sum of the entries on the particular page. This process is to be repeated and continued until the end of the year, when the annual account will be complete, and the new account for the following year will be in order. At the top of each page of receipts, in small figures, and a little to one side, it is well to write the balance, or difference between the total receipts and the total expenditures up to that time. The person keeping the account will

then be able to tell at a glance just how matters stand, and how rapidly her receipts are gaining over her expenditures.

A properly kept expense-account will furnish all necessary information as to the amounts of receipts of income and expenditures and the balance between them, at any time when such information may be necessary, and the task of living well within the income, as required by the rule, will then be reduced to a maintaining, at all times, of the required ratio between the receipts of income and the expenditures.

In the simplest condition of income and expenditure, the mathematical elements which are involved in this task will cause, but little difficulty. Thus, if a person shall have a regular income, say six thousand dollars per annum, and the ratio of expenditures to income which shall have been decided upon shall be two thirds (that is, the annual total expenditures shall not exceed two thirds of the annual income), the account-book at the end of each year must show an amount of receipts equal to six thousand dollars and an amount of expenditures not exceeding two thirds of six thousand, or four thousand dollars. If the expenses of living are uniform from month to month, the process may be still further simplified by verifying the required ratio at the end of each month. Thus, in the above illustration, the monthly income will be five hundred dollars, and

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the monthly expenditure must therefore not exceed two thirds of five hundred dollars, or \$333.

Incomes and expenditures are rarely uniform to the extent assumed in the example which has been given; for the purposes which are at present under consideration, therefore, they must be determined in advance by careful estimation, taking into consideration all possible irregularities, and making it certain that all errors shall be upon the side of safety—that is, that incomes shall be somewhat underestimated and expenditures similarly overestimated. The ability to estimate with close approximation the amounts of future incomes and expenditures will prove to be of great value, and this ability may be cultivated and improved by practising the following suggestion: At the beginning of the year a careful calculation of probable receipts and expenditures for each month of the year may be made, and a memorandum made of the amounts of income over and above expenditures which, according to the calculation, should be on hand on the last day of each month during the year. On the last day of each month the net amount of income actually on hand may be set down on the memorandum opposite the estimated amount for that month. At the end of the year the memorandum will show how far the ability of estimation is to be relied upon and will also offer suggestions for a more accurate estimation for the following year.

Of the two evils of being deprived of a part of one's income and of losing it all, the former is unquestionably to be chosen whenever there is a possibility of choosing. Accordingly the principal may be distributed in various kinds of investments; but this principle of distribution must not be carelessly or blindly applied, lest, in our anxiety for a proper variety of investments, we shall include some which will turn out disastrously.

PRINCIPAL AND INCOME.—An important rule for the preservation of property is that the line of distinction which must separate income from principal shall be kept constantly well defined; for if it is necessary to save a portion of the income each year, it certainly cannot be of less importance that the principal, which furnishes the income, shall be free from all confusion and complication which might lead to an encroachment upon and a consequent impairment of it.

In order that this distinction between principal and income may be clearly maintained, it is necessary to consider what ought properly to constitute principal and what income. The dictionary gives the following definitions,—Principal: property or capital as opposed to interest or income; a sum of money on which interest accrues or is reckoned. Income: the amount of money coming to a person or corporation within a specified time or regularly, whether as payment for

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services, interest, or profit from investment; revenue. For the purposes of this volume these definitions, unless materially modified, will prove to be unsatisfactory; for to the wise investor interest will very often accrue on money which is income as well as on that which is principal, and no careful person will be willing to regard all kinds of profit from investment as income. Definitions which will be found much more serviceable to investors are these: All money which is regularly received either for the use of property or as compensation for services is income; all other property is principal. Thus rents, interest, dividends, royalties, annuities, salary, wages, commissions, professional fees, regular returns from business, are to be regarded as income; while capital, gifts, legacies, devises, unusual profits from investments, and savings from income are to be accounted as principal.

In general it may be said that that which is purchased with principal is still principal in another form, and similarly that which is purchased with income continues to be income. Whatever is of a permanent nature may be considered as principal, while perishable objects which must be consumed and replaced are to be regarded as income. The houses in which we live are parts of our principals because they were purchased with parts of our principals and are of a permanent nature; but the furniture which is in the houses

may well be regarded as income, because it will eventually become antiquated and worn out and will have to be replaced.

Since regularity or uniformity of income, at least so far as the possibility of decrease is concerned, is a consideration of so great importance, an excellent guide to the distinction between principal and income will be this very quality of regularity. If, therefore, a profit is received which is unusual, occasional, or which the possessor cannot reasonably expect to receive regularly, it must be regarded as a part of the principal. If we purchase a house for five thousand dollars and sell it for six thousand, the profit of one thousand dollars, as well as the original purchase price, is principal. If we buy Government bonds and sell them at a profit of five hundred dollars, this profit is principal, not income. If we find fifty dollars in the street, it should become a part of our ever-growing principal, because we cannot depend upon finding that amount regularly each year. If we buy a horse and carriage for our own use, they should be purchased with income, and they will remain income for this reason and also because they are not of a permanent nature; but if we sell them at a profit the profit becomes principal because we cannot expect regularly to repeat the operation.

The suggestions which have been made for the distinguishing between principal and income

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appear to be in all respects sufficient. The necessity that such distinctions shall generally favor the principal is, however, so important, that to the suggestions which have already been offered may be added another to the effect that whenever serious difficulties in making the distinction shall arise, and investors shall find themselves in quandaries, the most advantageous solution of the problem will be that which will place the doubtful items to the credit of the principals.

CHAPTER II

BANKS—THE BANK-ACCOUNT

AN institution almost indispensable to the business woman is the bank. As will be seen in the following pages, the bank-account permits the business woman to pay her bills by checks drawn at the proper times, payable to the proper parties, and for the exact amounts, thus avoiding the dangerous necessity of keeping on hand considerable amounts of cash, or the necessity of running continually to the savings bank or other place of deposit, the often serious inconvenience of counting money correctly, difficulties in detecting counterfeit money, and the unpleasant possibility of contracting disease from the handling of paper money. The bank-account also furnishes a convenient and reasonably safe means of sending from place to place money by messenger or through the mails, for properly drawn checks cannot be collected without proper indorsements or forgeries of the same. It provides also, by the returned vouchers with the proper indorsements upon them, perfect receipts for the amounts which have been paid by the checks. It affords a

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comparatively safe means of carrying about upon the person, if necessary, the equivalent of large sums of money; a simple means of collecting the various checks, drafts, coupons, etc., which may be received; and, in the check-book, a valuable reminder of future obligations, a perfect account of receipts and disbursements, and a valuable record of past transactions.

Banks are not to be confounded with savings banks. They are entirely different institutions, founded under different laws, for different purposes, and with entirely different methods of business. Banks are established for the convenience of depositors, generally pay no interest on deposits, and allow their depositors to draw money by means of checks at any times and to any amounts which are within the balances of the depositors; while savings banks exist for the purpose of encouraging the saving of money, pay interest on all deposits, have no such things as checks, and pay money to depositors only upon the presentation of pass-books.

There are three general kinds of banks, not differing materially in their manners of doing business with depositors, but differing considerably in other important respects; they are National banks, State banks, and private or individual banks. National banks are organized under the laws of the United States Government, and are authorized to issue the bank-notes which constitute

a large part of the ordinary paper money in circulation among the people. Bank-notes are, in fact, promissory notes by which the National banks promise to pay to the bearers on demand the amounts of the notes in coin or in other standard money, and they are made good at all times by Government bonds which are required by law to be deposited, by the National banks, with the United States Treasurer. State banks and private or individual banks conduct business under the laws of the States in which they are located, and have no authority to issue bank-notes which pass, as the National bank-notes, currently as money. Private or individual banks are, as the name indicates, owned and controlled by individuals or business firms, and are conducted generally (except for certain restrictions and requirements of the laws) in the same manner as are ordinary business corporations.

SELECTION OF A BANK.—The selection of a bank with which to transact the business of the bank-account is a matter of great importance, inasmuch as some banks are, as far as we can judge at least, in sound and substantial financial conditions, while others are in danger of suspension and failure at each financial crisis and in times of continued depression in business. Unfortunately no regular method for ascertaining satisfactorily the financial conditions of banks can be set forth, since

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evidently the actual financial conditions of the banks depend upon transactions of which the public is and must remain for the most part ignorant. It is for this reason that suspensions and failures of banks usually come without warning of any kind to the depositors. The suggestions which will be given here for the discrimination between and the selection of banks will, however, in the majority of cases prove to be valuable and sufficient.

In the first place, other things being equal, National banks may be chosen in preference to State banks, and State banks in preference to private banks. Indeed, the adoption of the general rule to avoid private banks altogether whenever such avoidance is at all practicable may be recommended without hesitation.

Another important rule which may be followed with advantage when selecting a bank is that all considerations shall be confined to old and successful banks having large or considerable capitals and long-established, high reputations.

The capitals, or capital stocks, of banks are divided into shares and distributed among the several stockholders or shareholders, according to the respective amounts which have been purchased by them. Since the stockholders are usually liable, to the amounts of stock held by them, for the debts of the banks, the financial responsibilities of the banks will depend largely upon the amounts

of their capitals and upon the financial characters of their stockholders; in these respects, evidently, banks having large capitals and established good reputations will have the advantage over others.

In some instances banks which have made large profits in business, instead of distributing the profits as dividends to the stockholders, or using the profits to increase the capitals, have accumulated out of the profits funds which are called surpluses. In this manner certain banks have become wealthy and highly responsible although the amounts of their actual capitals may be comparatively small; for the purpose of estimating the responsibilities of such banks, the surpluses may to a certain extent be considered as forming parts of the capitals.

The rule for the selection of banks which has been last under consideration, will evidently tend to preclude from the list of satisfactory banks all such as are located in small cities and villages. These must generally be regarded as dangerous institutions, and must be entirely avoided except in cases which practically compel the making use of them.

The discounting of notes constitutes, to a greater or less extent, a part of the business of nearly every bank; it is a practice which, carelessly pursued, involves great risk, and has been the actual cause of many a bank failure. The practice may be briefly explained in the following manner:

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A business man may find himself in need of money for immediate uses. He draws and signs a promissory note, takes it to his bank, and asks the bank to discount it—that is, to pay him the amount of the note less a certain discount, greater or less, according to the responsibility of the business man, and to which the bank is entitled for the accommodation. The business man is expected to deposit with the bank some security or collateral (such as Government bonds, railroad bonds, or stocks), or to have the note indorsed by a responsible third party, or both. If the note, at maturity, shall be promptly paid, the transaction will prove a profitable one for the bank; for, in addition to the regular interest, the bank will have received the amount of the discount. Thus, tempted by the prospect of large profits, and of increasing business through liberal policies, banks may discount the notes of persons who, with their indorsers and collaterals, may turn out to be irresponsible and worthless, in which cases the banks are without remedy and must suffer the losses.

The published statements, and the statements which are printed by the banks for circulation among their depositors, may be of some value to the depositors in determining whether their banks are prudently managed. If the statements show very large businesses in the discounting of notes or that the banks are dealing largely in dangerous

so-called securities, the accounts should be at once withdrawn and more conservative banks made use of.

It may also be remarked in this place that, while first-class banks are generally unwilling to receive or maintain the accounts of persons whose balances are uniformly very small, or who are in the habit of drawing numerous checks for very small amounts, yet the balances at the banks should always be kept within proper bounds, more especially in times of panic and general financial disaster. All moneys over and above reasonable bank-balances should, until they may be more permanently invested, be deposited in trust companies, savings banks, or other safe depositories; and in times of panic, when there is an unusually large number of bank failures and suspensions, balances in the banks may wisely be reduced, at least temporarily, to much smaller amounts.

In some cases considerable amounts are deposited in banks with the understanding that the money is to be left on deposit for stated periods of time, and in consideration of this fact the banks often pay interest on such accounts. These accounts or deposits are called "special" or "time" deposits. As a general rule they possess no advantages over deposits in trust companies and savings banks, and they are open to the serious objection that the amounts cannot be quickly

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withdrawn for the purpose of depositing them in safer places, if occasion shall make such action necessary. In view of these facts special arrangements of this kind may well be dispensed with entirely.

The officers and clerks of the banks, with whom business women may have dealings, are: the president and cashier, who are the executive officers, and with whom all business except that of the bank-accounts must be transacted; the receiving-teller, who receives deposits; the paying-teller, who pays checks and certifies them when requested to do so; and the bookkeepers, with whom bank-books must occasionally be left to be balanced.

OPENING AN ACCOUNT.—The ordinary method of procedure upon opening an account at a bank is as follows: The proposed depositor presents herself at the bank during business hours, accompanied by a friend or acquaintance who is known at the bank and who may introduce her; or, if no such acquaintance shall be available, she may introduce herself, giving her name and residence, and whatever references may be required, and stating that she desires to open an account. She then writes the regular signature, which she intends to use for the signing and indorsing of checks, in a book which is provided by the bank for that purpose; gives the bank officers such

further information as they may require; hands in the amount of her first deposit; and receives from the bank a check-book, a bank-book (in which the amount of her first deposit has been entered), and some deposit tickets. The books and tickets are taken to her home by the depositor, and the simple proceeding has been completed.

SIGNATURES.—The signature (as well that used at the bank as that used for the signing of other important documents and papers) should possess two important qualities: first, it should be written in such a manner that it may be easily remembered in all its details, and all subsequent signatures should be made to resemble it as exactly as is possible; second, such a style of signature as will be difficult for others to imitate should be adopted. The first quality will enable the clerks and officers at the banks readily to recognize the signatures, and the second will tend to prevent forgeries.

The name should be written in full, or at least the full Christian- and sur-names should be used, generally without prefix or addition of any kind. The first name (Christian) and the last name (sur-name) are the necessary names, the middle names being merely additional.

When a bank-account is kept by a person in a fiduciary capacity (as an executrix, agent, trustee, or as treasurer for a society) the signature must

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include the distinguishing title, which may be either written in full or designated by a common or well-known abbreviation: thus, "Mary Johnson Doe, Extrx.," "Mary J. Doe, Trustee," "Mary J. Doe, Treas.," "Mary J. Doe, Agt." When a bank-account is kept by one person for the benefit of another who is the real proprietor (as by a daughter for an infirm or invalid mother), the former is the *attorney in fact* for the latter, and this fact should be indicated by the signature in this manner: "Jane W. Doe, by Mary J. Doe, Attorney in fact," or "Jane W. Doe, per Mary J. Doe, Atty. in fact," or "Jane W. Doe, by Mary J. Doe, Atty."

In order to lessen the probability of successful forgeries, signatures which are used at the banks and for similar business should not be used for ordinary purposes, such as the signing of letters, messages, etc. Slight but important differences (such as capitals written in different manners or the use of entire middle names instead of initials only) between signatures which are used for these different kinds of purposes, may be the means of detecting and preventing forgeries by those whose knowledge of the particular handwritings comes from the inspection of signatures at the ends of letters only.

BANK CHECKS.—A bank check, or, as it is commonly called, a check, is a written order to the

bank at which the person drawing the check has an account, to pay on demand part or all of the deposits to the depositor or to some other person. The person who draws and signs the check is called the *drawer* or *maker*; the person to whom the check is originally made payable is called the *payee*; a person who writes his name upon the back of the check, whether it be the payee or another person, is an *indorser*; and the person to whom the check is made payable by the indorsement is an *indorsee*. These terms are not all technically correct, since some of them apply properly to bills of exchange and promissory notes only. But they are in common usage and are not at all ambiguous; they therefore may be accepted as sufficiently correct for all ordinary purposes.

There are three general methods of drawing checks, having reference to the manner of payment: first, when the check is intended to be paid to some person, business firm, or corporation other than the drawer; second, when the check is intended to be paid to the drawer in person upon presentation at the bank; and third, when the check is intended to be paid to any person who may present it at the bank, as when a messenger or a person who is not known at the bank must be sent to cash a check. In the first case the check should be drawn payable to the order of the proper person, firm, or corporation, by the correct name, as is indicated in Figs. 1 and 2; in the second

No. 287... 0 NEW YORK January 20th 1891...

SAFE NATIONAL BANK

Pay to the Order of George Williams \$1016. ⁵/₁₀₀

One thousand and sixteen ⁵/₁₀₀ DOLLARS

Mary J. Doe

FIG. 1.

No. 201... NEW YORK May 24th 1892...

SAFE NATIONAL BANK

Pay to the Order of The Empire Provision Co. \$164. ³/₁₀₀

One hundred and sixty four ³/₁₀₀ DOLLARS

Mary J. Doe

FIG. 2.

No. 274... NEW YORK February 16th 1892...

SAFE NATIONAL BANK

Pay to the Order of Cash \$100. ⁰⁰/₁₀₀

One hundred ⁰⁰/₁₀₀ DOLLARS

Mary J. Doe

FIG. 3.

No. 297... 0 NEW YORK May 28th 1891...

SAFE NATIONAL BANK

Pay to the Order of Beaver \$200. ⁰⁰/₁₀₀

Two Hundred ⁰⁰/₁₀₀ DOLLARS

Mary J. Doe

FIG. 4.

case it should be made payable to "cash" or "myself," erasing or drawing a line through the printed words "the order of," as in Fig. 3; and in the third case the name of the payee should be "bearer," the words "order of" being erased, as in Fig. 4.

The blank checks which are furnished by the different banks for the use of their depositors differ to a considerable extent in the matters of design and the positions of the various spaces, but these variations are immaterial as far as the practical uses are concerned. Thus, the space which is intended for the numerals of the amount (in Fig. 1, \$1016⁵/₁₀₀) may be at the foot of the check and at the extreme left; or the space for the number of the check may be at the upper right-hand corner. Checks are sometimes printed in such a manner as to read "Pay to . . . or order," instead of "Pay to the order of" as in the illustrations. When such checks are used, those which are intended to be presented at the banks for collection by the drawers should read simply "Pay to cash," or "Pay to myself," the words "or order" being erased; and those which are intended to be collected by strangers at the banks should have the words "the bearer" written in the proper spaces, and the words "or order" should be erased, so as to read "Pay to the bearer." Checks of this style, which are intended to be paid to individuals or business firms,

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must, of course, be filled out without erasure, to read, for example, "Pay to William Jones & Sons or order."

Probably the best general rule is that unnecessary titles (such as Mr., Messrs., Esq., Miss, Mrs.) should not be attached to the names of the payees upon checks, because they are entirely superfluous. But there are occasions when the addition of titles serves to a certain extent to indicate the purposes of the checks, and there is therefore no objection to it. For example, a check which is given in payment of a physician's bill may very properly be drawn payable to the order of "Dr. Richard Roe"; a check which is given to a clergyman for charitable purposes may read "Pay to the order of Rev. John Doe"; and a lawyer's retainer may be paid by a check which is drawn to the order of "William Blackstone, Atty. at law." Checks which are given to senators, members of Congress, college professors, etc., may, as a matter of compliment, be drawn payable to the order of "Hon. John Doe" or "Prof. Richard Roe."

There are also cases in which the official titles of the payees form parts of their proper designations, as where checks are to be paid to persons not in their individual but in their official capacities. In such cases it is proper and necessary as a measure of precaution, that the official titles shall be mentioned in the checks. A check which is

intended for the payment of taxes on real or personal property should read: "Pay to the order of John Doe, City Treas.," "John Doe, Town Treas.," "John Doe, Co. Treas.," "John Doe, Collector of Taxes," or "Receiver of Taxes," as the case may be. A check for the payment of a mortgage which is held by the estate of a deceased person should be made payable to the order of "John Doe, Exr.," or "John Doe, Trustee"; or it may read "Pay to the order of the Estate of Richard Roe, Decd." So a check which is paid to a lawyer in settlement of his client's claim against the drawer should be made payable to the order of "William Blackstone, Attorney (or Atty.) for Richard Roe."

Whenever practicable, checks should be drawn payable to the orders of the persons, firms, or corporations who are intended finally to receive the money for which the checks are given. If several individuals shall be jointly entitled to the money, all should be named as payees, thus: "Pay to the order of John Doe, Richard Roe, Mary Williams, and Sarah B. Hicks." If either of several persons shall be entitled to the money, in the alternative, all should be made payees, with the connective "or" between the names; as "Pay to the order of John Doe, or Richard Roe, or Mary Williams." By this means checks, when they have been paid and returned by the banks to the drawers, will be found to have

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been indorsed by the proper persons, and they will therefore be available as receipts for the moneys paid; the possibility of collection by the wrong parties will also be materially diminished by the practice of this precaution.

The drawing of checks payable to the bearer is to be avoided except when checks which are otherwise drawn will not be practicable; for should they be lost they may, as a general rule, be collected by the finders before the banks can be notified of the losses.

An important consideration in the drawing of checks is the proper guarding against the possibility of fraudulent alteration, either by increasing the amounts, or by changing the names of the payees. For this reason all of the spaces in a check should be entirely filled up, either by the written amount, the names of the payees, or by lines drawn across the unoccupied spaces as shown in the illustrations. The space which is intended for the amount expressed in letters (called the *body* of the check, because it is considered the most important part, and in case of a difference between it and the numerically expressed amount, usually takes the precedence) should be filled up by beginning the letters on the extreme left, leaving very little space before them, and by writing the fraction which expresses the cents as near to the end of the letters as possible. In the same manner no unoccupied spaces should be left before, after,

or between the names of the payees, and the figures of the amount expressed numerically should be written close together, with no spaces either before, after, or between them large enough for the possible insertion of figures. In the amount of a check, cents are properly expressed by a fraction having two figures in the numerator and the numerals 100 in the denominator, as in Figs. 1 to 4.

As an example of the fraudulent increasing of the amount of a check (commonly called "raising the check") the following instance may be given: In a check for the amount of nine dollars and four cents the amount was, ignorantly or carelessly, written, "Nine $\frac{4}{100}$ Dollars" and "\$9 $\frac{4}{100}$ " with considerable spaces before the word "Nine" in the body of the check, and between the "\$" and the "9" in the numerically expressed amount. By the skilful insertion of the word "Ninety" and the figure "9" in the places indicated, the amount of the check was made to read, "Ninety-nine $\frac{94}{100}$ Dollars" and "\$99 $\frac{94}{100}$." The result was a loss of ninety dollars and ninety cents, which by the exercise of ordinary care, intelligence, or perception might easily have been prevented.

Sometimes checks are so written as to contain memoranda of the purposes for which they are given. For example, a check which is given in settlement of all claims is made to read, "Pay to the order of Richard Roe, in full of all de-

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mands"; or a check for professional services, "Pay to the order of Richard Roe, for professional services to date." So checks are sometimes given not for the purpose of paying debts, but to serve merely as memoranda of the debts; such checks (called *memorandum* checks) differ in appearance from ordinary checks in that they have the word "memorandum" written across the faces. These customs are not to be recommended; they poorly answer the purposes for which they are intended, for which much better means are always available, and they are often causes of misunderstanding and confusion.

The greatest care ought always to be taken that bank accounts shall not be overdrawn, or, in other words, a uniform and invariable rule should be adopted never to draw checks unless the balances at the banks shall be certainly sufficient for the payment of the checks. Banks ordinarily will refuse to pay overdrawing checks (the checks will be dishonored), and if, through confidence in and courtesy to the drawers, such checks shall occasionally be honored, nevertheless it may be taken for granted that the reputations of the drawers at the banks will be by no means benefited by the transactions.

With regard to forgeries of signatures upon checks, the general rule is that if a bank shall pay a forged check the loss will fall upon the bank, because banks are presumed to know or to ascertain

the correctness of their depositors' signatures, and to be able to detect forgeries; but if the success of a forgery has been contributed to by the carelessness of a depositor, the bank will be exonerated and the depositor will be compelled to suffer the loss. If a forgery of a depositor's name shall be discovered by the depositor, the bank must be notified of the forgery at once; otherwise the bank may be discharged from liability. In general all reasonable care should be taken by depositors to render the crimes of forgery and counterfeiting as difficult as possible, and also, to the best of their abilities, to assist the banks in the prosecution of remedies and in the punishment of criminals of this kind.

Forgery may be said to be one of the most comprehensive of crimes. It is broadly defined as the false making or altering of any writing with intent to defraud; and the mere offering or disposing of a forged writing, with knowledge of the forgery and with intent to defraud, may be itself a forgery. The essence of the crime of forgery is evidently the intent to defraud. Therefore such acts as writing names incorrectly when indorsing checks, in order that the indorsements shall correspond with the names of payees which have been incorrectly written, are not forgeries, and, under circumstances which will be explained in the proper place, are not objectionable.

The credit of an ordinary bank check depends

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upon the character of the drawer only. If the drawer is responsible or honest, the check will undoubtedly be duly paid, and if the drawer is irresponsible and dishonest the check will probably be worthless. There are therefore many occasions upon which persons to whom payments are to be made ought not to accept ordinary checks, because of the difficulties or losses which may follow the dishonoring of the checks. Common examples of such cases are real-estate transactions such as the purchase of real estate, where a deed must be delivered and may be put on record before the vendor can collect the amount of the check which is given for the purchase price; the loaning of money on bond and mortgage, where the legal papers must be delivered upon the receipt of the check for the amount of the loan, and the mortgage may be recorded before the check can be collected by the mortgagor; the discharging or satisfaction of a mortgage, where the bond and mortgage must be returned to the mortgagor and a discharge or satisfaction-piece delivered at the time of receiving the check which is intended to pay the debt, and where there is a possibility that the bond may be destroyed and the mortgage discharged of record before the mortgagee can make certain that the check will be paid. In all such cases, as well as in all cases where persons to whom checks are to be paid must incur important obligations, relinquish or destroy important

remedies, or otherwise run the risks of serious difficulties upon the faith and credit of the checks, *certified* checks only should be accepted.

A check is said to be *certified* when the bank upon which it is drawn certifies that there are sufficient funds at the bank to the credit of the drawer for the payment of the check, and that the amount of the check will be reserved by the bank for that purpose, or, in other words, when the bank itself certifies that the check is good. The process of having a check certified is as follows: The check is regularly drawn and signed and presented to the paying teller of the bank upon which it is drawn with the request to certify it. The teller ascertains the balance of the drawer of the check and, if the balance shall be sufficient, stamps upon the face of the check (usually in bright red or blue ink) the word "certified" or "good," with the name of the bank and the date of certification, and writes his name upon the certification. He then makes a memorandum of the certification in a book which is kept for that purpose and returns the certified check to the person who has presented it. The general effect of the certification of a check is to make the bank which certifies it responsible for its payment.

Since the credit of a certified check depends principally upon the character of the bank which has certified it, and since banks are not all equally

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responsible, obviously there may be occasions upon which certifications should be rejected as unsatisfactory, as, for example, where checks which have been certified by unknown and insignificant banks are offered in payment of large amounts and the non-payment of the checks will certainly involve unusual difficulties. In certain cases also there may be reasonable grounds to suspect the genuineness of certifications. The way out of the difficulty in cases of the former kind will be the requiring of checks which have been certified by satisfactory banks in lieu of the doubtful checks; and the remedy in cases of the latter kind will be inquiries at the certifying banks before the doubtful certifications have been accepted. Occasions which will call for such unusual precautions are indeed very rare, and the rule that properly certified checks may be generally relied upon will seldom be the cause of serious difficulties.

Checks which are intended to be certified ought evidently to be correctly and carefully drawn. They should be made payable to the orders of the proper parties, and if the names of the parties have not yet been ascertained, the checks should be made payable to the orders of the drawers, and afterwards indorsed by them to the orders of the proper parties.

Checks which are drawn by banks (commonly called *cashiers' checks*, because they are commonly signed by the cashiers of the banks) are usually

regarded as equivalent to certified checks, since the banks which draw them are, as a matter of course, responsible for the payment of them. The suggestions which have been made for the cautious handling of certified checks will therefore apply in all respects to cashiers' checks.

INDORSEMENT.—By the indorsement of a check is meant the writing upon the back of the check, by the payee, of an order for the payment of the check to some other party. The effect of an indorsement is to make the new party an indorsee, or, in fact, a new payee. The original payee can no longer collect the check, because by the indorsement all rights to the check have been assigned to the indorsee. The drawer of the check and all indorsers (generally in the order of their indorsement, in point of time) are responsible to the holder for the payment of the check, unless the indorsements shall be conditional or qualified, as will be hereafter explained; and an indorser who has been compelled to make good a check will have a remedy against the other indorsers, and of course against the drawer.

An *indorsement in full* is made by writing the words "Pay to the order of John Doe" (John Doe being the indorsee) and signing the name of the indorser across the back of the check. This is the correct and usual style of indorsement and should be used always except in some special cases which

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will be mentioned hereafter, since it insures payment to the proper parties and compels indorsees to indorse the checks before they can be collected.

An *indorsement in blank* is one in which simply the name of the indorser is written upon the back of the check, without other words. Such an indorsement is an implied order to the bank to pay the check to any person who may be the holder, and practically transforms the check from one which is payable to the order of a designated person to one which is payable to the bearer. Strictly speaking, no further indorsements are necessary for the payment of a check which has been indorsed in blank, although it may pass through a dozen hands before reaching the bank; nevertheless banks sometimes require persons presenting such checks for payment, to indorse them, chiefly as an assurance that the checks have been regularly and properly obtained.

A *qualified indorsement* is one which limits or qualifies the liability of the indorser. Thus where an indorser shall be unwilling to assume liability upon a check, she may (provided the indorsee will accept such an indorsement) relieve herself of liability by indorsing the check "Pay to the order of Richard Roe, without recourse, Mary J. Doe," or "Mary J. Doe, without recourse." So when a doubtful check is to be deposited, in order to avoid the payment of possible protest fees the indorsement may read, "For deposit for collection,

Mary J. Doe," or, "Pay to the order of the Safe National Bank, New York City, for collection, Mary J. Doe."

Indorsements may also be *restrictive*—that is, they may be so worded as to restrict the payment of the checks to some certain parties, as where checks, intended to be deposited, are indorsed, "For deposit," "For deposit only," or, "For account of"; in such cases the banks in which the checks are deposited will be restricted to the collection of the checks from the banks upon which they are drawn.

In a strict sense an indorsement in the words "Pay to Richard Roe," without the words "or order" or "order of," will have the effect of restricting the payment of the check to Richard Roe personally, as will be the case if a check shall be drawn payable to "Richard Roe"; but in practice, in view of the fact that the drawer of a check will, as a general rule, have no preference between payment to the payee and payment to any other person whom the payee may designate by his indorsement, banks will often consider such indorsements as oversights, and pay such checks to the orders of subsequent indorsers as in ordinary cases. It must be said, however, that there is seldom if ever any legitimate object to be gained by such experiments in the methods of business, and this statement is a sufficient reason for their uniform avoidance.

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An *accommodation indorsement* is one which is made by a person who has no direct interest in the check, but who indorses it simply to lend credit to the check as an accommodation to the drawer. Accommodation indorsements (more common on bills of exchange and promissory notes) are sometimes necessary for persons who are actively engaged in commercial business, but they have often been the causes of loss and financial ruin; requests for such accommodations, therefore, should meet with prompt and positive refusals from those for whose instruction this volume has been written.

The first indorsement upon a check should be made by writing across the back of the check, about one-third way down, and from the top of the check toward the bottom, the words of the indorsement and the indorser's name. An indorsement which is written at the extreme end of a check may be easily torn off by some mischievous or dishonest person, and one which is written too far down upon a check will not allow sufficient room in the proper places for subsequent indorsements.

Properly arranged indorsements will read from the tops toward the bottoms of the checks upon which they are written. This has become an established rule, because it is evidently necessary that indorsements shall follow each other in regular order, all reading in the same direction, and the general practice among business men when

reading indorsements is to turn checks in such a manner that indorsements which have been written according to the rule will then appear in the most convenient positions. Many indorsements, especially those made by persons who are generally unacquainted with the methods of business, are wrongly written and are thus the causes of considerable inconvenience to persons through whose hands they necessarily pass; there seems to be, also, some difficulty in understanding this apparently simple matter. Let us suppose that in Fig. 1 there is a small circular hole represented by the small circle at the top of the check and near the left-hand corner. The back of the check with the several indorsements will then appear as represented in Fig. 5, the small circle at the left still representing the supposed hole at the top of the check. A check will be in the proper position for indorsement if the following method of turning shall be employed: a person who is about to indorse a check should take it in her left hand, grasping it at the left end, and, holding it face toward her and right-side up, turn the top of the check toward her, at the same time revolving the right end toward her; this movement will bring the back of the check uppermost with the top on the left hand.

If, notwithstanding the regular rule, the first indorsement upon a check shall have been written wrongly, all subsequent indorsements must also

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be written wrongly; otherwise the general inconvenience caused by the first error will evidently only be increased by efforts which are intended to be in the way of correction.

In indorsements the names ought to correspond with the names of the indorsers as written and spelled in the bodies of the checks or in previous indorsements. Thus, if a check shall be drawn (or indorsed) payable to the order of "M. J. Doe," it should be indorsed "M. J. Doe," not "Mary J. Doe" or "Mary Johnson Doe." But if checks are intended to be deposited in banks, the final indorsements must correspond with the names and spelling of the signatures at the banks. Hence if the above-described check shall be indorsed for the purpose of depositing to the credit of Mary J. Doe in the Safe National Bank of New York City, the indorsements, properly written, will read: "Pay to the order of Mary J. Doe, M. J. Doe," and "For deposit only, Mary J. Doe"; or "Pay to the order of Mary J. Doe, M. J. Doe," and "Pay to the order of the Safe National Bank, New York City, Mary J. Doe." Similarly, if in a check the name of a payee shall be misspelled, or incorrectly written (unless the variation shall be so great as to leave the real payee in doubt, in which case the check should be returned to the drawer for correction), the indorsement should include both the incorrect and correct names. For example, suppose that a check

which is intended for Mary J. Doe shall be, by mistake, drawn payable to the order of Mary J. Dow; the proper style of indorsement (supposing that the check is to be paid to Richard Roe) will be, "Pay to the order of Mary J. Doe, Mary J. Dow"; and "Pay to the order of Richard Roe, Mary J. Doe." If a check shall be made payable to the order of "Mary J. Doe, Extrx." ("Agent" or "Trustee"), the first indorsement must include the necessary additional word; and if a check shall be drawn payable to the order of Jane W. Doe, and the bank-account shall be kept by Mary J. Doe as Jane's attorney in fact, the check (to be deposited in the Safe National Bank) must be indorsed, "Pay to the order of the Safe National Bank, New York City, Jane W. Doe, by Mary J. Doe, Atty. in fact"—"Atty.," or "Attorney in fact," as the signature at the bank may be.

In case of the loss or theft of a bank check, the holder who has lost it should immediately notify the bank upon which it is drawn, giving a careful description of the check, with the number, date, amount, drawer's and indorsers' names if possible, and requesting the bank to stop payment upon the check and to hold it, when presented, for the rightful owner. The drawer also should be notified of the loss and should be requested to stop the payment of the check at the bank. In such a case, if the check has been drawn or in-

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dorsed in such a manner that a forged indorsement will be necessary before it can be collected, the notice to the bank will probably be successful; but if the lost check has been indorsed in blank, or drawn payable to the bearer, the loss may fall (and very justly) upon the person who has carelessly lost it or suffered it to be stolen.

When the payment of a check, at the bank upon which it is drawn, is refused (the check is dishonored) because the balance of the drawer is insufficient, the check will be returned to the person presenting it with the letters "N. G." (not good) written upon the face. When payment is refused because the drawer has no account at all at the bank upon which the check is drawn, the returned and dishonored check will bear upon its face the words "No account."

A dishonored check is said to be *protested* when a notarial certificate, to the effect that a notary-public has presented the check for payment, that payment has been refused, and that he therefore protests against the drawer and indorsers for the payment of the check and costs, is attached to the check. The object of the protest is to furnish official evidence of the non-payment; it is used (in connection with checks) principally upon dishonored checks when the holders of the checks and the banks upon which they are drawn are in different States, and is usually accompanied by notices to the indorsers that the check has been

protested and that the holder looks to them for payment.

The bank check, unlike other negotiable instruments, is said to die with the drawer, or, in other words, banks have no authority to pay checks after the deaths of the drawers, although the debts for which the checks were given may legally be collected from the estates of the deceased drawers. The custom (which is sometimes made use of between husbands and wives in order to provide the survivor with funds for immediate expenses, in case of the sudden death of the one keeping the bank-account) of drawing checks which are intended to be used only in case of the deaths of the drawers, is therefore entirely improper.

MAKING DEPOSITS.—When making a deposit in a bank the procedure should be as follows: (1) A careful and explicit memorandum of the items making up the deposit should be made in the check-book, with the amounts of each item and the sum-total of the deposit, as will hereafter be explained and illustrated. (2) All the checks to be deposited should be properly indorsed, the last indorsement on each check being "For deposit only," with the signature of the depositor. This style of indorsement is undoubtedly proper; it must, however, be stated here that banks very generally object to the indorsement in question

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as being restrictive. When such objection shall be offered, checks which are intended to be deposited should be indorsed in the ordinary manner to the order of the banks, thus, for example: "Pay to the order of the Safe National Bank, New York City, Mary J. Doe." (3) A deposit ticket should be properly made up by writing upon it, in the places which are provided for them, first the sum of all coins or specie contained in the deposit, next the sum of all the bank-notes or bills, and lastly the amount of each separate check, with the sum-total of the deposit, as is shown by the deposit ticket represented in Fig. 6. (4) The deposit ticket, checks, and bills should be placed in the bank-book, at the page where the entry of the deposit is to be made. (5) All, together with the specie of the deposit, should then be taken to the bank and handed in at the window of the receiving teller, the coins or specie being laid upon the small shelf or platform at the window at one side of the bank-book. (6) The gross amount of the deposit having been entered by the teller in the bank-book, and the book having been returned to the depositor, the entry in the book should be examined for the purpose of making sure that it corresponds with the sum-total of the deposit in the check-book and upon the deposit ticket.

CHECK-BOOKS.—Check-books are, as the name

indicates, books containing blank checks, which are issued by the banks for the use of their de-

Pay to the order of
 Sarah Atkins
 George Williams

Pay to the order of
 Roe & Doe
 Sarah Atkins

Pay to the order of
 The Security Bank
 Boston Mass
 Roe & Doe

FIG 5

Deposited By			
<i>Mary J. Doe</i>			
<i>January 10th 1897</i>			
IN THE SAFE NATIONAL BANK			
SPECIE		32	07
BILLS		152	
CHECKS		7	82
		136	20
		2	109 17
		2	437 26

FIG 6

positors. They are printed with one, two, three, or even a greater number of checks on each page

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(those having three checks to the page will probably be found most convenient), each check being usually punctured along its edges in order that it may be torn out without difficulty, the pages being somewhat longer than the checks and having a stub or stump for dates, numbers, and memoranda opposite each check, so that when the checks are torn out only the stubs remain. If the checks are not punctured along their edges, a flat, sharp ruler or thin metallic tearer may be used to tear the checks nicely from the books.

The following pages represent the first few pages of a check-book with memoranda of deposits and checks, the corresponding checks necessarily having been torn out and used, and the first of these pages representing the fly-leaf at the beginning of the check-book.



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SAFE NATIONAL BANK OF NEW YORK CITY.

First deposit, January 2, 1895.

John Roe & Co., rent of store 163 Narrow St., New York, for Jan., 1895 . . .	\$216.66
Richard Doe, six mos. int. on his bond to Jan. 1, 1895	500.
Jane Williams, purchase price of house and lot 239 Jones St., N. Y. City, this day sold to her— <i>Principal</i>	9,000.
	<hr/>
	\$9,716.66

Jan. 18th.

Wm. Johnson, rent of store 165 Narrow St., N. Y. City, for Jan., 1895 . . .	216.66
	<hr/>
	\$9,933.32

No. 1.New York, Jan. 14, 1895.

Geo. W. Miller & Co. (Silver St., N. R., N. Y.
City), 5 tons nut coal @ \$4.50, and 10 tons
furnace coal @ \$4.50

67 50

No. 2.New York, Jan. 14, 1895.

Dr. Thomas Clark (916 W. 73d St., N. Y.), pro-
fessional services June 15, 1894, to date

54

No. 3.New York, Jan. 16, 1895.

Henry T. Jones, Treas. (922 W. 70th St., N. Y.
City), pew rent Western Cong. Church, N. Y.
City, six mos. to Jan. 1, 1895

100

221 50

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1895.					
Jan. 19th.			9	933	32
Thompson & Son (62 April St., Boston), rent of bldgs. 962 & 932 March St., Boston, for Jan., collected by them as agents	195	83			
Coupons U. S. 4% Bonds, six mos. int. to Jan. 1, 1895 . .	200				
John Rider, price of horse "Bill" sold him Jan. 18th . .	105				
Watson & Roe (18 Wide St., N. Y.), on acct. of rents of N. Y. property for Jan., 1895, collected by them as agts. . .	650				
Jan. 27th.			1	150	83
Watson & Roe (18 Wide St., N. Y.), bal. of rents, N. Y. property for Jan., 1895, collected by them as agts., less commissions	632	17			
Chas. Tolley (132 Narrow St., N. Y.), ground rent of lots 132 & 134 Narrow St., N. Y., for quarter ending Dec. 31, 1894	1	200			
			1	832	17
			12	916	32

\$9,711.82.	(Certified.)	No. 4.	221	50
New York, Jan. 20, 1895.				
Edwd. B. Wilson (Brownville, Conn.), amt. loaned				
him, 1st mtg., 5 yrs., 5%, his bond, on house and				
lot 842 W. 83d St., N. Y.			9,000	
(Principal.)				
(See deposit Jan. 2, 1895.)				
		No. 5.		
New York, Jan. 21, 1895.				
Cash, for household expenses			100	
		No. 6.		
New York, Jan. 21, 1895.				
Hobson & Co. (12 March St., Boston). Ins.				
prems. on bldgs. 926 & 932 June St., Boston,				
each \$5,500, @ 1 %. Expire Jan. 20, 1898			110	
			9,431	50

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1895.					
Feb. 3d.				12	916 32
Frugality Savings Bank, N. Y., Income saved last year, and six mos. int. on part to Jan. 1, 1895 (Principal.)				1	002 04
Feb. 4th.					
Jones & Co. (291 Narrow St., N. Y.), Royalties on my decd. husband's book, "His- tory of New England," Jan. 1, 1894, to Jan. 1, 1895 .		275			
George Henderson, quarter's ground-rent of lot 977 W. 38th St., N. Y., to Feb. 1, 1895		250			
					525
				14	443 36

\$3,484.82.	9,431	50
<u>No. 7.</u>		
New York, Feb. 3, 1895.		
Mary Brown (978 E. 35th St., N. Y.). Dress-	176	19
maker's bill for myself from May 1, 1894, to date		
<u>No. 8.</u>		
New York, Feb. 3, 1895.		
Bilson & Co., groceries from Jan. 1, 1895 to date	41	67
<u>No. 9.</u>		
New York, Feb. 5, 1895.		
Wright & Sons (908 E. 22d St., N. Y.). Carpenter		
work on houses in W. 72d St., N. Y.—2 storm	232	15
doors, cellar stairs, etc.		
	9,881	51

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The most conveniently arranged check-books are those having two sets of lines ruled on the backs of the stubs (on the pages which are to be used for the memoranda of deposits), as is shown in the preceding pages, the two columns nearest the centres of the pages being intended for the dollars and cents of the separate items making up the deposits, and the other two columns for the total amounts of the various deposits. When a check-book contains only one of these sets of lines (that which is intended for the total amounts), the several items of the deposits may be put down outside of the ruled columns (as on the fly-leaf represented on page 46, imagining the totals \$9,716.66 and \$216.66 to be in the ruled columns); otherwise mistakes, due to the confusion of figures, are likely to occur in adding up the columns of totals.

When a page of checks shall be used up, the columns of checks and deposits should be added up and the sums carried over to the tops of the respective next following pages; the balance (obtained by subtracting the sum of the checks from the sum of the deposits) should also be put down in small figures at the upper left-hand corner of each page of checks. When adding up the columns of checks and deposits, the amounts which have been carried over from the preceding pages, and placed at the tops of the pages in question, must of course be included in the additions.

The balances, which are written in small figures at the top of each page of checks, are the actual balances at the bank to the credit of the depositor. It is most necessary that these balances shall be correct, else the depositor may be deceived and overdraw her account. The following is an excellent method of verifying the balances, which will remove all danger of mistakes: The balance is first obtained in the regular manner, by subtracting the sum of the checks from the sum of the deposits, and a memorandum (not in the check-book) is made of its amount; it is obtained a second time by adding the sum of the deposits which have been made since the last previous balance, to the last previous balance, and from this sum subtracting the sum of the checks which have been issued since the last previous balance. Thus, referring to pages 49 and 50, the balance which is first to be obtained will be $\$12,916.32 - \$9,431.50 = \$3,484.82$. The sum of the deposits which have been made since the last previous balance and the last previous balance will be (pages 49 and 50) $\$1,150.83 + \$1,832.17 + \$9,711.82 = \$12,694.82$, and the sum of the checks will be $\$9,000 + \$100 + \$110 = \$9,210$. The latter subtracted from the former will give $\$12,694.82 - \$9,210 = \$3,484.82$, which corresponds with and verifies the balance which has been first obtained, which balance may then be entered in the check-book (at page 53) correct.

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A uniform and invariable rule should be adopted that all moneys which shall be received, from whatever source, and also all moneys which shall be disbursed, shall go through the bank in the regular manner; that is, that all checks and cash which shall be received shall be deposited in the bank, and that all bills and expenses shall be paid either with checks, which are drawn on the bank, or with cash which has been drawn from the bank. Also all items of principal should be distinctly marked "principal" in the check-book, as shown on pages 46 and 50.

All memoranda in check-books should be made as explicit and comprehensive as possible, using abbreviations whenever they will be necessary for the purpose of saving space, and without danger of misunderstanding. Addresses, dates, rates of interest, times of expiration of insurance policies and mortgages, and details of transactions in business, are all valuable data which a properly kept check-book will contain.

All checks which are received should be at once deposited—on the day of receiving them (or at least on the next), if at all practicable—for, if the final payment of a check shall be unreasonably delayed, and the bank upon which it is drawn shall fail in the meantime, the loss ordinarily will fall upon the holder, whose negligence will have been the principal cause of the non-payment.

At frequent intervals (if the account is very

active: every month or six weeks, generally speaking, when each page of the book is nearly filled, and always when requested to do so by the bank) the bank-book must be left with the bookkeepers at the bank to be balanced. This the bookkeepers do by entering, upon the pages opposite to those which are used for the entry of deposits, the amounts of all the checks which have been drawn by the depositor since the last balancing of the bank-book (all of which checks have been, in the meantime, returned to the bank for final payment by the various holders or by their banks), and by writing in the book the balance, which is obtained in the usual manner. When, a few days afterward, the depositor calls at the bank for the balanced bank-book, the book (sometimes also a separate memorandum of the items of the checks and deposits) and all the checks which have been issued by the depositor since the last balance (which checks are now called *vouchers*, and are stamped "paid," or otherwise marked by cutting crosses through them to indicate that they have performed their work and are of no further value) are returned to her. At the earliest opportunity the vouchers should be examined and compared with the stubs in the check-book, in order to guard against mistake and forgery, and the check-book should be balanced to correspond with the bank-book.

The balancing of the check-book should be

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done by adding up all the deposits which are included in the balance of the bank-book (or all the deposits which have been made since the last balancing of the bank-book), without reference to the private balances which have been written upon each page of stubs in the check-book as before suggested, and all the amounts of the vouchers which have been returned by the bank. The difference between these two sums must correspond exactly with the balance obtained by the book-keepers in the bank-book, else there must be a mistake, or possibly a forgery, which must be at once inquired into.

For a practical illustration of the somewhat confusing process of balancing the check-book, we may suppose pages 60 and 61 to represent two pages, respectively, of memoranda of deposits and stubs in a check-book; that the bank-book has been (on October 13, 1896) left at the bank to be balanced; and that it has been returned balanced to October 15th, the balance being \$4,005.45.

As soon as possible after receiving the balanced bank-book, the vouchers must be compared with the stubs in the check-book, and found to be correct; that is, all the checks which have been issued since the last bank balance are present without alteration, and there are no fraudulent checks. The deposits which are included in the bank-book balance (all subsequent to the last bank balance) must then be added up, and the

sum found to be \$8,633.78, which corresponds with the figures in the bank-book. Next, the sum of the stubs corresponding to the vouchers which have been returned is found to be \$4,628.33, which also corresponds with the figures in the bank-book, and on the memorandum sheet, if there be one. The subtraction of the latter sum from the former will give the balance which is contained in the bank-book, \$4,005.45, and the figures may then be written (in red ink, or with lines drawn under them to distinguish them) in the check-book in the manner which is indicated in the illustrations.

The practical effect of the bank balance is to complete the account up to the date of the balance, and the account thereafter proceeds in the same manner as if it were an entirely new one, beginning with a deposit which is equal to the balance. Thus, in the illustrations of pages 62 and 63, after the deposit of October 17th and the stub for check No. 298 has been filled out, the private balance to be written at the top of the next page of stubs will be $\$4,655.45 - \$286.42 = \$4,369.03$.

It sometimes happens that one or more of the checks which have been issued since the last balance (usually checks which have been sent to a distance, or the collecting of which has been carelessly or otherwise delayed by the holders) have not yet been returned to the depositor's

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1896.			8	200	46
October 10th.					
John Roe & Co., rent of 163 Narrow St., N. Y. City, for Oct., 1896	216	66			
Wm. Johnson, rent of 165 Nar- row St., N. Y. City, for Oct., 1896	216	66		433	32
			8	633	78
Oct. 15th. Balance.			4	005	45
Oct. 17th.					
Watson & Roe, on acct. of rents, N. Y. City property, for Oct.				650	
			4	655	45

\$5,139.22.	•	3,061	24
	No. 296.		
New York, Oct. 10, 1896.			
Receiver of Taxes. Taxes on 995, 997, 999 W.			
73d St., N. Y. City, for 1895		1,522	09
	No. 297.		
New York, Oct 11, 1896.			
James Ogden (84 Narrow St., City), commission			
for sale of house, 922 W. 98th St., N. Y. City,			
1 % on \$4.500		45	00
	Balance	4,628	33
		4,005	45
		8,633	78
	No. 298.		
New York, Oct. 20, 1896.			
Rogers & Son (132 Wide St., N. Y. City). Bill for			
gas fixtures in building 976 W. 101st St., N. Y.			
City		286	42
		286	42

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1896.			8	200	46
Oct. 10th.					
John Roe & Co. Rent of 163 Narrow St., N. Y. City, for Oct., 1896	216	66			
Wm. Johnson. Rent of 165 Narrow St., N. Y. City, for Oct., 1896	216	66		433	32
			8	633	78
Oct. 15th. Balance.			5	527	54
Oct. 17th.					
Watson & Roe, on acct. of rents, N. Y. City property, for Oct.				650	
			6	177	54

\$5,139.22.	3,061	24
<u>No. 296.</u>		
New York, Oct. 10, 1896.		
Receiver of Taxes, for taxes on 995, 997 & 999 W.		
73d St., N. Y. City, for 1895	1,522	09
<u>No. 297.</u>		
New York, Oct. 11, 1896.		
James Ogden (84 Narrow St., N. Y. City). Com-		
mission for sale of house, 922 W. 98th St., N. Y.		
City, 1 % on \$4500	45	
	4,628	33
Less check 296 not yet in	1,522	09
	3,106	24
Balance	5,527	54
	8,633	78
Check No. 296	1,522	09
<u>No. 298.</u>		
New York, Oct. 20, 1896		
Rogers & Son (132 Wide St., N. Y. City). Bill for		
gas fixtures in building, 976 W. 101st St., N. Y.	286	42
	1,808	51

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bank for payment, and consequently the bank cannot return the missing vouchers to the depositor with the balanced bank-book. In such a case, the bank of course has no knowledge of the missing checks, and therefore can take no account of them in the balance, which fact has the effect of making the balance in the bank-book larger than it should be by the sum-total of the missing checks. An examination of the vouchers will show at once what checks, if any, are missing, and when balancing the check-book the sum of the missing checks must be deducted from the sum of the stubs (which is equivalent to adding it to the check-book balance) in order that the balances in the bank-book and check-book may correspond. The missing checks will, as a matter of course, sooner or later turn up at the bank for payment, and then will be charged against the depositor in the next balance. They must, therefore, be entered again on the check-book stub in the same manner as if new checks had been drawn. Thus, for an illustration, suppose that the check No. 296 (page 63) has not been returned with the vouchers and balanced bank-book. The balance in the bank-book will then be $\$4,005.45 + \$1,522.09 = \$5,527.54$, and the balancing of the check-book, in order to correspond, should be done in a manner which is indicated on pages 58 and 59. The private balance, to be written at the top of the next page of stubs, will be, in this case, $\$6,177.54 -$

\$1,808.51 = \$4,369.03, or precisely the same as if the check had not been missing. If, instead of one missing check, there shall be several, the manner of balancing the check-book will be the same, except that the sum-total of all the missing checks (the memorandum giving their numbers) must be deducted, and subsequently re-entered upon the stub.

In case of the accidental destruction or permanent loss of a check which has been drawn by the depositor, the fact must be noted in the check-book, either by erasing the amount of the lost check (making proper memorandum upon the stub), so that the amount will have no effect upon the balance, or by deducting the amount of the check from the balance, and noting that the check has been destroyed.

When a check which has been deposited has been returned to the depositor's bank dishonored ("N. G." or "No account"), the bank should give immediate notice to the depositor to make the check good. This may be done by the depositor going at once to the bank, drawing her own check to the order of the bank for the amount of the dishonored check, and exchanging the checks with the bank, afterward taking the necessary measures to collect the amount from the drawer or indorsers of the dishonored check. In this manner the balance in the check-book will be made to correspond with that at the bank,

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without other calculation or memorandum than that upon the stub of the check which makes good the dishonored one, since the bank will not charge the dishonored check against the depositor. Instead of this method of making dishonored checks good, banks often charge the amounts of the dishonored checks against the persons who have deposited them, giving the depositors notice of the facts. In such a case, the balance at the bank will necessarily be less than the balance in the check-book by the sum-total of the dishonored checks. In order to correct this discrepancy, the amount of the dishonored checks must be deducted from the sum of the deposits in the check-book. Suppose that the check of John Roe & Co., deposited October 10, 1896 (page 62), has been returned not good, and that the amount, \$216.66, has been charged against the depositor by the bank. When the bank-book has been balanced at the bank the balance will be \$4,005.45 — \$216.66 = \$3,788.79. The check-book must therefore be balanced in the following manner: from the sum \$8,633.78 deduct the amount \$216.66, with the memorandum "less check of John Roe & Co. deposited Oct. 10th, returned N. G., and charged against me." This will make the sum of the deposits $\$8,633.78 - \$216.66 = \$8,417.12$, and the balance in the check-book, $\$8,417.12 - \$4,628.33 = \$3,788.79$, which corresponds with the balance at the bank.

If the bank-book has not been balanced at such a time as will exactly complete it (some checks still remaining out, or some of the checks from the new bank-book being included in the balance), the account in the new check-book must be commenced by carrying over, from the old book to the respective pages of the new book, the sums of the stubs and deposits, in each case with the memorandum, "from old check-book."

CHAPTER III

SAVINGS BANKS

SAVINGS banks are, properly speaking, benevolent institutions, organized for the purpose of encouraging the saving and accumulation of money. Hence, in theory at least, if perhaps not always in practice, extraordinary precautions are taken by savings banks to guard against loss of funds, and all profits, over and above economical and necessary expenses, are paid to the depositors in the form of interest.

SECURITY OF SAVINGS BANKS.—The law generally undertakes to exercise great care in regulating and directing the management of savings banks. They are organized under the laws of the States in which they conduct business, and all persons are forbidden to transact the business of savings banks without the permission of, and the strict compliance with, the statutes. The laws of the various States, in this respect, are not entirely uniform; but in the more careful and conservative of the States the following regulations may be considered to apply in a general manner:

Specified numbers of incorporators are required, and their characters and responsibilities must be satisfactory to the authorities. The amount of deposits which a savings bank may receive from a single individual or corporation is limited, in order that funds of the bank may not become too large for advantageous investment. Speculation with the funds is strictly forbidden. Loans upon personal security, dealing in promissory notes, bills of exchange, and general merchandise are not allowed. Investment of the funds is restricted to United States bonds, the bonds of certain States, cities, counties, and villages, and mortgages upon real estate (usually not to exceed a certain proportion of the actual value of the real estate). They may own such real estate as is necessary for business purposes, or as may be obtained by necessary foreclosure, collection of judgments, etc. Regular and sworn reports, giving all necessary information concerning the conditions of savings banks, are required to be made to the State authorities. Certain acts on the part of the directors and officers which are considered to be dangerous to the depositors are made punishable as crimes.

Savings banks which have been long established in conservative States are very generally considered to be as safe and reliable as any class of moneyed institutions. And the statistics with regard to savings banks appear certainly to sustain this general confidence.

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SELECTION OF A SAVINGS BANK.—The selection of a savings bank is a matter of great importance to those who may find it necessary to deposit their money in such an institution. Although the laws of most of the States may honestly undertake to render savings banks safe against failure, in many cases the laws will be found to fall short of a full realization of their good intentions. Savings banks have failed, and will fail, in spite of watchful legislatures and wise and severe judges. Therefore it will not be sufficient to depend alone upon the restraining and exacting requirements of the law in this respect.

In the first place, only regular savings banks in the most conservative accessible States should be considered, avoiding all co-operative and mutual benefit companies, which profess to act as improved substitutes for savings banks, and avoiding also, when possible, all States the laws of which allow savings banks to invest their funds in personal securities, and other unsafe speculations. In the second place, old, well-known savings banks, doing business in large cities, should invariably be preferred. Finally, savings banks which fulfil the foregoing requirements, which are managed by officers of well-known integrity and sagacity, and which have passed through numerous panics and business crises without difficulty, approach nearest of all to that ideal of perfect security which is contemplated by,

and is in just accordance with, their beneficial purposes.

The usual routine of opening an account at a savings bank may be described as follows:

The proposed depositor presents herself (introducing herself, or, if accompanied by a friend who is acquainted at the savings bank, a brief introduction by the friend is desirable) with the statement that she wishes to open an account by depositing so much money, the amount being mentioned lest there should be objection to it. She then, at the request of the clerk, writes her signature in a book which is kept by the savings bank for that purpose; gives accurately such further information with regard to age, parents' names, name of husband, children, etc., as may be required by the savings bank for use in case of the death of the depositor; and hands to the clerk the money which she wishes to deposit. In her turn (announced by the calling of her name) she receives from the teller a pass-book in which the amount of the deposit has been properly entered to her credit, and this completes the business of opening the account.

PASS-BOOKS.—The pass-books furnished by savings banks are the only records and evidences of their accounts which are in the possession of the depositors, and must be presented when

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drawing or depositing money, or when having the amounts of interest calculated and entered.

In form, a pass-book is a simple account-book (the savings bank in account with the depositor), the left-hand pages being used for the entry of deposits and sums of interest, and the right-hand pages for the entry of amounts drawn.

The mere possession of a pass-book is, under ordinary circumstances, considered to be *prima facie* evidence of ownership, and savings banks, in general, will be warranted in paying the money of their depositors to any persons who shall present the pass-books. Proper care should be taken, therefore, to guard against the loss of pass-books. Depositors should make careful notes of the numbers and other designations of their pass-books, and also of the post-office addresses of their savings banks, in order that, in case of the loss of their pass-books, immediate notices may be sent to the savings banks, with instructions to hold the books if presented, and losses may thus be prevented.

In many of the savings banks, the duties of receiving-teller and paying-teller are performed by the same person, assisted, if necessary, by clerks. To the teller, or to one of his assistants, the pass-book must be presented when making deposits and when drawing money.

Deposits in savings banks are made in the following simple manner: The depositor hands the

money to be deposited and the pass-book to the teller, or to his assistant, stating that she wishes to deposit so much money (giving the exact amount), and takes her seat to await the entry of the deposit in, and the return of, the pass-book. When the pass-book is ready for delivery to the depositor, her name is called and she receives from the teller her pass-book, with the amount of the deposit properly entered, she usually being asked by the teller to repeat the amount of the deposit, in order to guard against mistake.

As a general rule, only money (actual coins and bills) will be received by the savings banks, since their business with their depositors is not to be supposed to include the collection of checks, coupons, drafts, etc.; but in some cases savings banks make exceptions to this rule, and receive checks on deposit, as accommodations to their depositors. It is advisable, however, even in cases of the latter kind, to facilitate the business of the savings banks by depositing only money, and that in as few bills and coins as can be done conveniently. Drawing money from the savings bank is an almost equally simple process. The pass-book is presented with a statement of the amount of money which the depositor wishes to draw; a receipt, on the printed form, which is furnished by the savings bank, is signed by the depositor; and, when the entry has been made, and the money counted out, the depositor receives her pass-book and the amount

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of money from the teller in the same manner in which she receives her pass-book when making deposits.

As a matter of course, pass-books should be examined immediately upon leaving the tellers' windows, in order to make sure that the entries of deposits or of amounts which have been drawn have been correctly made.

INTEREST.—The general principles upon which the rates of interest paid by savings banks are determined are as follows: At certain regular periods of the year (semi-annually, on the first days of January and July, for example), the directors and officers ascertain, by a careful balancing of all the accounts, the receipts from various investments of the savings bank since the last interest-day, and the expenses of the management for the same period; and from these the net profit of the business for the period is determined. This profit, divided *pro rata* among the depositors, fixes the rate of interest for the period in question.

The work of balancing the accounts of a savings bank necessarily requires a considerable time, and therefore interest cannot be collected by the depositors until some time after the regular interest days. Allowing one month for the work of balancing, and assuming that the regular interest-days are January 1st and July 1st, pass-books should be taken to the savings banks to be bal-

anced, and to have the amounts of interest entered, during the first days of February and the first days of August of each year. If there are frequent entries of deposits and of money drawn, that is, if the accounts are very active ones, the pass-books should be more frequently balanced, on or about May 1st and November 1st, in addition to the regular times which have been mentioned, for instance.

For the purpose of quickly verifying the balance in the pass-book, and also for the purpose of having satisfactory data of the account at the savings bank, in case of any misunderstanding while the pass-book is in the hands of the book-keepers (albeit very improbable), the items which are necessary for the calculation of interest and of the balance may be copied from the pass-book, and the balance computed by the depositor in her note-book before taking the pass-book to the savings bank to be balanced or for the entry of interest. Upon receiving from the savings bank the pass-book, with the interest entered and the balance recorded, the depositor may, then, quickly compare the figures with those which are contained in her note-book, and may call attention to any discrepancy before leaving the savings bank. If this suggestion shall not have been acted upon before the balancing of the pass-book, the computations of interest and balance ought, at least, to be verified by the depositor in the usual manner,

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at the earliest opportunity, and the savings bank must be notified at once of any mistake.

A general rule among savings banks, with regard to the payment of interest upon deposits, is that interest will not be paid upon all deposits for the exact times during which they have been in the hands of the banks, but only upon such sums as shall have been on deposit during an entire period of time between the last two regular interest-days. Thus, if a certain amount shall be deposited in a savings bank on the 1st day of January (the regular interest-days being January 1st and July 1st), six months' interest on the amount will be due on the first day of the following July; but, if the deposit shall be made on the 1st day of February, interest will not begin to accrue until the next interest-day (July 1st following), and the depositor will, therefore, sustain a loss of interest for a period of five months. It is obvious from this fact, that, whenever a choice of times shall be possible, deposits in savings banks should be made during the few days prior to the regular interest-days. For the same reason, when it shall be necessary to draw money, if by waiting a short time the money will remain in the savings bank over an interest-day, the drawing should be delayed, if possible, until after the interest-day; otherwise six months' interest on the amount which shall be drawn will be lost. In some cases, savings banks allow margins of a few days in this respect,

in the case of deposits, and announce the fact by properly placed notices, but such cases are to be regarded as exceptional, and cannot be regularly calculated upon.

In conformity with the general rule, when calculating the amount of interest which is due upon a certain deposit, the exact amount which has remained in the savings bank during the entire period of time between the interest-days must be obtained from the figures and the dates in the pass-book, and the interest, at the ascertained rate, must be computed upon this amount. All considerations with regard to the advisability of making deposits in savings banks must take into account this method of paying interest; else depositors may be grievously disappointed when, upon going to the savings banks for their anticipated amounts of interest, they may learn that very little or perhaps no interest at all is due.

Long-continued, steady accounts, which remain year after year in the savings banks, without being disturbed by the frequent drawing of money, will receive, evidently, the benefit of the interest to the greatest possible extent. Indeed, it is for the purpose of encouraging just such accounts, and of discouraging active or variable accounts, that the peculiar method of paying interest which is common among savings banks has been adopted.

RUNS ON SAVINGS BANKS.—At certain times

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of sudden financial panic and excitement, large numbers of depositors in savings banks become alarmed, and, seriously apprehending the failure of their savings banks, hasten, without due consideration, to withdraw their accounts entirely, sometimes only to place the accounts in much more dangerous positions. Such a rush of frightened depositors constitutes what is called a "run" upon the savings banks. If a particular savings bank shall be in a properly sound condition, and able to pay in full all the depositors who may demand their money, a run upon the savings bank will, for reasons which have been already explained, result in an enormous loss of interest to the depositors. If, on the other hand, the savings bank shall be unable, upon so short a notice, to pay all of the amounts which may be demanded by the panic-stricken depositors, the run will cause the savings bank, temporarily at least, to suspend payments.

An occurrence of this kind, while unfortunately it cannot fail to increase the alarm of the depositors, a large proportion of whom may be ignorant people, unable to comprehend the real situation, by no means necessarily indicates that the savings bank is insolvent, or that any one of the depositors will lose anything by the suspension. The condition of the savings bank may be perfectly sound, the business may be prosperous in every way, and the funds may be invested with perfect security,

and with excellent discretion, and yet, under the press of circumstances, it may be impossible for the savings bank to obtain money quickly enough to supply the importunate demands of the crowd of depositors.

Savings banks very generally provide, for their own protection, by-laws to the effect that no amounts of money shall, at any time, be drawn by any depositor unless a prior notice of thirty, sixty, or ninety days shall have been given of the intention to draw money. Similar rules will be found printed in the pass-books of many of the savings banks. But the stated rule is to be regarded as entirelyle precautions, and has not been enforced by the savings banks except under the occasional emergencies of panics and extensive runs.

It is difficult to determine upon the course which should be pursued by prudent and thoughtful persons concerning their accounts in savings banks in cases of great financial excitement and panic, when moneyed institutions are failing in quick succession, and when the common thought and desire of the majority is to withdraw accounts from the savings banks at the earliest possible opportunities. Upon such occasions it will be necessary to decide quickly; nevertheless it will be necessary to put absolutely to one side the action of the majority, and thus guard effectually against the dangerous contagion of excitement.

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It may be stated, as a general rule, that the headlong, rushing crowd goes wrong—does precisely what it should not do—and the part of wisdom will always be the using of one's own judgment rather than of the thoughtless determination of a mob. Prompt, but not headstrong consideration, must be had of all the facts and circumstances which shall be obtainable, and final conclusions must be followed to the letter. The element of uncertainty will always be present, from the fact that the individual depositors have no adequate means of ascertaining the exact financial conditions of their savings banks. In this respect the probabilities are only to be estimated from the general appearances and reputations of the savings banks, from their experiences and conduct upon former similar occasions, and from the business characters of the officers and managers. Perhaps the most natural answer to queries as to what shall be done with accounts in savings banks in emergencies such as are under consideration, will be that depositors will adopt the safe method with regard to their principals, though they may sacrifice parts of their incomes, if they shall promptly withdraw their deposits from the savings banks, upon all such dangerous occasions. But this, evidently, is the conclusion of the multitudes which crowd the savings banks at the first rumors of danger, and, unless it may be assumed that wise and far-seeing persons will

be able to read the omens of danger in advance, and thus forestall the difficulty, the adoption by them of the conclusion which has been mentioned will serve but to place them in the ranks of the multitudes. There are other considerations in the premises which may not well be neglected. Savings banks appear to be the especially protected children of the law. If, then, such institutions are deemed to be unsafe, what other institutions for the depositing of money can be considered less so? Inasmuch as there seems to be no satisfactory answer to this query which will serve the general purpose, the choice must lie between different institutions of the same kind, that is, between savings banks. But, upon the presumption that by the application of the suggestions which have been made, the best accessible savings banks shall have been in every case selected, the choice will disappear altogether, and a quandary will remain as the result of an attempt to apply the principles of logic to the practice of financiering. In short; there is obviously no general rule which can be laid down for the guidance of depositors in savings banks under the circumstances which are under consideration. The obtaining of the best results will always require the employment of sound individual judgment and business sagacity. But the rule which appears to come nearest to the desirable general rule, and which, as far as can be ascertained,

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seems to be best sustained by the practical results, may be stated as follows: If the reputations of the particular savings banks shall be excellent, the selections having been made according to the directions which are contained in this chapter, and if depositors shall be able to observe no direct indications of weakness, their accounts should not be disturbed.

CHAPTER IV

TRUST COMPANIES AND SAFE DEPOSIT COMPANIES

THE term Trust Companies, as used in the banking law, has been officially defined by the Legislature of the State of New York as "any domestic corporation formed for the purpose of taking, accepting, and executing such trusts as may be lawfully committed to it, and acting as trustee in the cases prescribed by law, and receiving deposits of moneys and other personal property, and issuing its obligations therefor, and of loaning money on real or personal securities."

The powers conferred upon trust companies are generally broad and extensive. They may act as fiscal or transfer agents for municipalities or corporations; receive trust moneys and other personal property on deposit; act as receivers, trustees, executors, administrators, and guardians; and accept and execute almost any form of trust, power, or assignment. They may lease or purchase real property; loan money on real or personal property; deal in stocks, bonds, bills of exchange, etc.; and exercise the powers conferred upon banks generally.

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Trust companies are generally under the supervision of the State and the law undertakes to render them safe by requiring certain formalities in their formation and incorporation; by requiring certain amounts of capital to be paid up; by restricting the investment of capital and funds; and by requiring reports to be filed at stated times with the banking (or similar) department of the State.

SELECTION OF A TRUST COMPANY.—The selection of a trust company should be governed by the considerations which have been given for the selection of banks and savings banks; the wisdom of the rule to choose large companies in the largest available cities will appear very plainly from the statutory regulations concerning capitals and securities to be deposited with the superintendent of banks. In addition to these precautions, there is another consideration which it will be well not to overlook when selecting trust companies to be used as depositaries for funds awaiting investment, and for other purposes of a fiduciary nature. As has been remarked, trust companies are authorized to conduct banking businesses, and in this connection to discount notes and other evidences of debt, which practice is considered by careful and conservative persons to be more venturesome and speculative than is consistent with the nature of the institutions.

There are certain highly reputable trust companies which, agreeing with the conservative views which have been expressed in this work, conduct no regular banking businesses, but confine themselves to the special kinds of business for which they were, properly speaking, organized, and in which their peculiar field of usefulness exists. In such institutions, the element of danger may be considered as reduced almost to a minimum, and, other things being equal, they should be preferred to trust companies which undertake to combine the regular business of trust companies with that of the banks.

MAKING DEPOSITS.—The selection of a trust company having been judiciously accomplished, the general procedure between the depositor and the institution will be as follows: Upon introduction to one of the clerks, or introducing herself, the proposed depositor states briefly her business (for example, that she wishes to deposit ten thousand dollars), and hands the check (not necessarily certified) or money to the clerk who is in attendance upon her. If the deposit consists of checks, bills, and specie, the depositor may fill out a deposit ticket similar to those used in banks, and if she wishes to deposit coupons, they should be placed in one of the small envelopes which are provided for this purpose, the envelope having a memorandum upon its back of the

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number, amounts, and total of the coupons. It may be stated, however, that such mixed deposits will with better propriety be made at the bank, and the depositor's single check may then be presented for deposit at the trust company. The depositor then writes her signature in the company's book, and receives a certificate of deposit to the effect that the trust company has received from her the amount of the deposit, upon which interest at a certain specified rate will be paid, and that the company will repay the sum of the deposit to the depositor or her assigns upon notice (usually five or ten days), reserving the right to reduce or discontinue the interest, or to pay off the principal on notice to the depositor by mail or otherwise. The provision requiring several days' notice before paying depositors is a precautionary measure, the purpose of which is to prevent a sudden run on the institution, and, as has been explained in the chapter on savings banks, is never enforced under ordinary circumstances. On the back of the certificate of deposit is printed a form of receipt with columns for the various amounts of principal and interest which may be drawn by the depositor from time to time. The certificate of deposit answers, in general, the purposes of the pass-book of the savings bank. It is the depositor's evidence of the deposit, and, although trust companies are very cautious with regard to the payment of money, it must be

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carefully secured against loss or theft, the number, date, etc., being recorded in the depositor's note-book or check-book, in order that immediate notice may be given the trust company in case of loss.

DRAWING MONEY.—When drawing money from the trust company, the depositor presents her certificate to the clerk with the statement that she wishes to draw so much money. If only a part of the amount on deposit shall be drawn by the depositor, she signs a receipt for the amount on the back of the certificate and also in the company's book, and receives again her certificate and the company's check for the amount drawn. When the entire amount on deposit and interest shall be drawn, the receipts are signed by the depositor and the certificate surrendered to the trust company. The checks which are given by trust companies to their depositors for money which has been drawn are the companies' own checks drawn upon banks in which the companies keep their accounts. Such checks will generally pass for certified checks, for the reason that the trust companies are presumed to be at least as sound and responsible as the banks upon which their checks are drawn. But if, for special reasons, a trust company's check is required to be certified, the check must, as in ordinary cases, be taken to the bank where it is payable for the certification. For each deposit a separate certifi-

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cate is ordinarily given by the trust company. It will facilitate matters, therefore, and at the same time will limit the number of certificates which are to be taken care of, if the depositor, instead of making several small deposits, shall make fewer deposits of larger amounts; but, for this purpose, delays which will involve considerable losses of interest are, as a matter of course, not advisable.

INTEREST.—The rates of interest which are paid by the trust companies, although varying somewhat at different times, are usually much lower than the rates which are obtainable from regular investments, and even considerably lower than the rates which are paid by savings banks. Probably from two to two and one half per cent. is not far from the average. But the interest which is paid by trust companies accrues for the whole periods of time during which the deposits are in the hands of the companies, and this fact must be taken into account if one chooses to compare the direct benefits in the form of interest paid respectively by savings banks and trust companies. By way of illustration, we may suppose that the sum of three thousand dollars is to be deposited on the 1st day of March, to be drawn for a specific purpose on the 1st day of March following, that is, the money is to remain on deposit for just one year. If, now, this sum

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shall be placed in a trust company at two and one half per cent. interest, a full year's interest, or the sum of seventy-five dollars, will be received; while if a savings bank shall be the depository, at the rate of four per cent. interest, only six months' interest, from July 1st to January 1st, or sixty dollars, will be obtained. If, on the other hand, the deposit is to be made on or shortly before an interest day at the savings bank, and to remain a full year, the depositor will receive a full year's interest at the rate of four per cent., or the sum of one hundred and twenty dollars, by making use of the savings bank.

SAFE. DEPOSIT COMPANIES.—The term "safe deposit company" has been defined by the banking law of the State of New York in the following words:

"The term safe deposit company, where used in this chapter, means every domestic corporation formed for the purpose of taking and receiving upon deposit as bailee for safe-keeping and storage, jewelry, plate, money, specie, bullion, stocks, bonds, securities, and valuable papers of any kind, and other valuable personal property, and guaranteeing their safety upon such terms and for such compensation as may be agreed upon by the company and the respective bailors thereof, and to rent vaults and safes and other receptacles for the purpose of such safe-keeping and storage."

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In most of the States safe deposit companies are under the supervision of the banking, or other proper departments, and are governed generally by laws similar in character to those relating to trust companies, with such modifications as are required by the differences in the corporations. They are generally forbidden to loan money on property which is left with them for safe keeping, and the stockholders are made liable to certain amounts for all losses.

In some of the States no special statutory provisions have been made for the restriction and regulation of safe deposit companies, and in such cases the legal liability of such companies in case of loss of deposited valuables will be no greater than that of other storage companies which receive and store valuable goods for compensation. And this statement will be a sufficient reason for the cautious, if any, use of such companies.

The companies have the right, in case the rent of vaults or safes shall remain unpaid for a period of three years, and upon giving notice by mail to the persons hiring the vaults or safes, to open the vaults or safes in the presence of the officers of the company and a notary public, and to place the contents in the general vaults, in order that the safes or vaults may be rented to other parties.

A properly arranged safe deposit, or the premises in which the business of a safe deposit com-

pany is carried on, may be described generally in the following manner:

The building is a strong and substantial one, which is as nearly fire-proof and burglar-proof as it can be made, and protected at all times by numerous reliable guards and watchmen. The main portion of the building is divided into a large number of fire-proof compartments, of sizes varying from small boxes for the reception of papers to large vaults for the storage of valuables of considerable bulk, each with its special locks and keys, and all separated from the offices and waiting-rooms by several massive steel doors which are situated at various places along the passage ways. All the locks and bolts are of the most powerful and approved kind; guards are properly stationed at all gates or doors; and various other precautions, such as pass-words, admission cards, requiring the giving of names, etc., are taken to prevent the entrance of such persons as may have no right to be upon the premises.

SELECTION OF A SAFE DEPOSIT.—In addition to the precautions which have been mentioned in the preceding chapters for the careful selection of banks, savings banks, and trust companies, and which evidently will apply with equal force to the selection of safe deposit companies, an inspection of the premises should be made before deciding

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upon the particular safe deposit company with which to entrust the most valuable of one's articles of property—articles which, at the same time, may be of the kind which will be most likely to be stolen.

There are considerable differences between the plans and arrangements of the various safe deposits as well from the point of view of convenience and personal liking, as from that of actual strength and security; and the officers of safe deposit companies will, at reasonable times, cheerfully and courteously show their premises to intended patrons whose appearances shall be indicative of proper intentions.

HIRING SAFES.—The process of hiring safes or vaults of a safe deposit company is usually quite simple and direct. The person wishing to hire a safe, having made her choice among the safe deposit companies which are at her disposal, and having been introduced to the proper officers, selects her safe or vault; comes to an understanding with regard to the rental, times of payment, etc.; gives her name, address, and other required information or references to the officers; signs an agreement stating the term for which the safe is hired, the rental, times of payment, etc., if required; pays the amount of the first payment; and receives the keys, pass-words, and other

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instructions which may be necessary for obtaining admittance to the safes.

Because of the peculiar liability of safe deposit companies to the danger of robbery, it may be presumed that they will exercise extraordinary care, not only in the actual guarding of the valuable property which has been entrusted to them, but also in the selection of their patrons. Proper introductions at the safe deposit companies, when seeking to engage safes or vaults, will, therefore, be the means of saving considerable time and of otherwise facilitating the proceeding.

The pass-words and instructions for the purposes of admittance which are received at the safe deposits must be carefully and accurately remembered, for, at least until depositors shall become well known to the clerks and guards, any hesitation or forgetfulness on the part of depositors will tend to interfere with or prevent their free entrance to the safes.

CHAPTER V

THE GENERAL PRINCIPLES OF INVESTMENT

THE principles and methods of business which, thus far, have been elucidated in this volume, have relation chiefly to institutions which are commonly used either as mediums for the convenient transaction of business (banks and safe deposit companies), or as depositories for money while awaiting more permanent dispositions—that is as temporary investments (savings banks and trust companies). We have now come to the consideration of the more lasting and regular sources of income which, because they are intended to endure indefinitely, we call permanent investments, and which, since they are the foundations upon which our fortunes will depend, can scarcely be treated with too much care and diligence.

INVESTMENT AND SPECULATION.—The word “invest” primarily means *to clothe in or with, to cover with*, hence, to protect with; it carries with it the ideas of security, comfort, and permanence, for our clothing protects us against the weather and affords us comfort during our entire lives.

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The words "invest" and "investment" are far too commonly used in the sense which properly belongs to the words "speculate" and "speculation," and the general failure to observe and recognize the wide differences between the meanings of such words is perhaps broadly indicative of the loose and careless spirit of the age.

To "speculate" signifies *to spy out, to search for*, to explore the unknown, hence, to experiment. The suggestion of chance and risk which the investor seeks, first of all, to avoid, is included in the meaning of the word. To play a game of chance for a valuable stake is to speculate. To say that a man *invested* his money in a game of chance is actually to make use of the gibberish of a fool, yet to many persons even the degree of misapplication of terms which is present in such an expression will appear only with difficulty. Modern tendencies have brought these divergent words into such close relationship that we continually hear of persons who have purchased railroad stocks or mining stocks, "not as speculations, but as investments," meaning probably that the stocks have been fully paid for, instead of having been purchased "on margin," and that, therefore, the purchasers may hold the stocks over possible periods of depression without almost certain loss. In reality, such an operation may be considered as a speculation, in which only that degree of caution which is common to all persons,

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except simpletons and gamblers, has been made use of.

The safest fundamental principle with regard to the management of property is to abstain entirely from speculation; or in other words, to confine all financial operations entirely to regular and well-known forms of investment. As will be explained later on, there are methods of speculation which approach so nearly to investments that they are perhaps permissible to persons who are possessed of extraordinary shrewdness and special ability. There are also speculations, varying all the way from those in which the chances are probably in favor of success, to such as will, almost without exception, result in heavy loss or ruin. It is, however, a fact beyond reasonable question that the proportion of speculating men who are successful in the long run is almost infinitesimal—perhaps, the world over, one in ten thousand—and scarcely a notable exception to the general and broad statement, that women always lose when they speculate, can be called to mind.

For the practical application of the rule to avoid speculation, and to confine financial transactions strictly to investments, satisfactory methods of discriminating between investments and speculations will be necessary, for it must be admitted that exact distinctions between them will not be, always and to all persons, without difficulties.

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From the definitions which have been given, it may be inferred that the practical distinction between investments and speculations will involve the element of safety. Such dispositions of money as are universally admitted to be without risk, having long-established and well-known kinds of securities (such as mortgages for example), are investments, and all dispositions of money in manners which are untried, experimental, or known to be dangerous, are speculations.

Another, and perhaps a more definite rule of distinction, is this: If money is placed for the purpose of obtaining an increase in the principal, the transaction is a speculation; if money is placed for the purposes of securing the principal and obtaining a regular income, the transaction is an investment. This rule of distinction will give rise to the suggestions that all forms of speculation are not necessarily dangerous, and that all forms of investment are not necessarily free from danger. And as illustrations it may be said that the purchase of first-class improved real estate, for the purpose of obtaining a profit by the enhancement of values, will be a speculation which may be without danger, while the purchase of dividend-paying stocks, for the purpose of obtaining an income, will be an investment which will often prove to be dangerous.

The accuracy of such statements cannot be doubted; but, instead of permitting cautious

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owners of property to depart from the general rule to avoid speculations, they may, for purposes of a greater degree of safety, serve to confine the financial transactions of property owners, not only to investments, but to certain kinds of investments, the peculiar advantages of which will, in the course of the following pages, be made plain.

PURCHASE INVESTMENTS AND LOAN INVESTMENTS.—For the purposes of discussing the general principles of investment, it will be necessary to divide investments into two general classes: first, the class in which investors become the absolute owners of the securities, as in purchases of real estate, Government bonds, etc.—which may be called *purchase investments*: and, second, the class in which investors advance money upon the promises of borrowers to return the money with interest, and upon the securities which the borrowers pledge or bind in support of their promises, as in loans upon mortgages—which may be termed *loan investments*.

Of the two general classes of investments, the former, at first glance, appears to be the more advantageous; for, if securities shall not be sufficient when they are actually owned and controlled by investors, it may be difficult to suggest a manner in which the securities may be made sufficient. But, on the other hand, loan invest-

ments, properly made, will enjoy an excess of security, which will not often be present in purchase investments. Thus, if an investor shall loan the sum of ten thousand dollars upon bond and mortgage, the value of the mortgaged premises may be twenty thousand dollars; but if real estate, which is worth ten thousand dollars shall be purchased, it may be presumed that the purchase price will amount, at least very nearly, to ten thousand dollars.

The two general classes of investments will, at certain points of the discussion upon which it is now necessary to enter, require somewhat different methods of treatment. They may, however, be more conveniently considered together, by the aid of proper suggestions and explanations, by way of distinction, whenever such appear to be necessary.

SAFETY OF INVESTMENTS.—The first important consideration concerning investments is that they shall be, as nearly as possible, absolutely safe; and the second is that they shall return fair and regular incomes. These two considerations will be found to comprehend the entire discussion of the general subject of investments.

Taking up the discussion of the considerations in the order in which they have been mentioned, it must be remarked that there are two general requisites for the safety of investments: first,

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there must be real and ample securities for the money which is invested; and, second, the securities must be within the control of the investors.

In order that securities may be real and ample they must have actual and permanent values amounting to considerably more than the amounts which have been invested; for, at best, there are always possibilities which will require margins on the side of caution, and an indefinite or unknown security, or one which may be subject to serious fluctuations, and may even disappear entirely at some future time, amounts practically to no security at all.

MARGIN OF SAFETY.—The difference between the actual and permanent values of securities and the amounts of the corresponding investments, or, —since it must be assumed that, under no possible circumstances, will the difference be upon the wrong side,—the excesses of the actual and permanent values of securities over the amounts of the corresponding investments may be termed the *margins of safety*.

In this place will appear the principal necessity for the distinction which has been made between purchase investments and loan investments. Indeed, difficulties in the way of applying the rules which have been given the purchase investments seem here to present themselves. Thus, the rule which requires the margin of safety evidently

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cannot be satisfied with respect to purchase investments unless either the securities shall be purchased at prices which are considerably less than their actual and permanent values, or the necessary margin of safety shall be, in some other manner, supplied. So, also, the application of this rule to purchase investments appears to conflict with the rule which, for the greatest safety, requires the avoidance of speculations; for, if purchase investments cannot safely be made without obtaining direct increases to the principals of the investments, it may be difficult to perceive wherein they differ from speculations.

These objections will have the practical effect of removing from the list of permissible investments many kinds of purchase investments, and that such a result is neither unintentional nor deplorable will be sufficiently demonstrated in the succeeding chapters of this work. Nevertheless there are certain kinds of purchase investments with respect to which the overcoming of the objections which are now under consideration will not be difficult. Such purchase investments (which are to be distinguished from speculations because, although they may, and assuredly ought to, furnish increases to the principals, the chief purpose is the obtaining from them of regular incomes) will provide the necessary margins of safety by means of the excesses of actual values over the purchase prices, and also by the

enhancements of values which must not fail to appear.

It may also be remarked that, since in purchase investments the securities are, in the greatest possible degree, within the control of the investors, the necessity for large margins of safety will be much less than in cases of loan investments.

The principle of the margin of safety will be better understood after a study of the succeeding chapters upon the subjects of mortgages and real estate.

VALUATION OF SECURITIES.—The importance of correct valuations of the securities upon which investments are to be made can scarcely be overestimated, seeing that the securities are to be regarded as the foundations upon which the safety of investments must rest. And the greater care must be devoted to the work of determining the valuations, for the reason that, obviously, no general rules for the guidance of investors in this respect can be devised. The skill and judgment of investors will here meet with the greatest difficulties, which, however, need not dismay investors, since they have been overcome in every successful investment.

The method of investigation by means of which accurate valuations of securities are to be obtained may be described in the following manner:

The average actual values (that is the obtain-

able cash prices) which the particular or similar securities have maintained, for the greatest possible number of past years, and the present actual values must be ascertained, and the sagacity and judgment of investors must then be depended upon for correct conclusions as to the effects which future events will have upon the values. It will be observed that this method includes two very different processes, the one (the ascertaining of past and present values) being often comparatively simple and definite, while the other (the forming of correct conclusions with regard to future values) is, in many cases, complex and difficult. According as these two processes can or cannot be brought into operation, and according as the former, or definite process, will or will not predominate, in some cases, the application of the method which has been given will directly accomplish the purposes in view; in other cases it will be but partially successful, and in still others it will altogether fail.

If the proposed security for an investment shall be a plot of land, the average price for which the land or similar land in the vicinity has been sold during past years, and the present value of the land, will not be difficult to ascertain, and the difficulties in the way of conclusions concerning the future values will be reduced to minima; indeed, to such an extent will the definite process predominate that the values which will be furnished

by it may often be safely regarded as the actual value of the land. If the proposed security for an investment shall be the stocks of a gas company or of a street railway, the previous actual values may be difficult to ascertain, and cannot be safely depended upon to fix the permanent actual values, because new conditions (such as increases or decreases in the population which supports the enterprise, adverse legislation, or injurious competition), which will seriously interfere with the calculation may and probably will arise. If the stock of a corporation, which has been recently organized for the manufacture of some special novelty, shall be the security which is offered, it is evident that the actual value of the security will depend alone upon the future success of the novelty which is to be manufactured, and the method which is in question will be impossible of application.

Notwithstanding exceptions such as have been suggested, for the purposes of general results, the method which is under consideration will prove to be satisfactory and sufficient. Indeed, even in exceptional cases, the method will not altogether fail, for though the desired valuations cannot by its use be determined, the general character of the securities as uncertain and unsafe will be fully established.

The necessary magnitude of the margin of safety will depend to a considerable extent upon

the character of the securities. For reasons which have been already suggested, the present margins of safety in purchase investments, which are in other respects entirely satisfactory, may, indeed, be small; while in loan investments generally it may be said that the larger the margins of safety shall be the better will be the characters of the investments. If the securities for loan investments shall be in every respect first class, margins of safety of from twenty-five to forty per cent. may be accepted; if the securities shall be somewhat uncertain in character, much greater margins must be required; and if the securities shall be of dangerous kinds, the margins of safety must be infinitely large—that is, the investments must not be made at all.

A loan which is secured by a mortgage on good real estate in the city of New York will be generally considered to be perfectly safe if it shall amount to sixty or even a greater percentage of the ordinary value of the real estate; a loan upon the stock of a manufacturing company, or of a railroad company, will require a very much larger margin of safety, if such a loan shall be considered at all; and a loan upon a chattel security, such as horses or live stock, which may be lost through death or removal, will not be for a moment entertained by a careful person.

The laws of a country or State may, and in many cases do, have a vital effect upon the safety

of investments, because evidently laws may be entirely adequate for, inadequate for, or even obstructive to, the remedies which are necessary for the protection of investors. The regular precautions, which are necessary for the avoidance of such difficulties, will require investors to have the laws of the different States in which they shall propose to make investments carefully examined, and such proceedings cannot fail to be advantageous even though they may involve considerable expenditures. A simpler way out of the difficulty, however, and at the same time a practice which will probably produce more satisfactory results in the majority of cases, is that of confining investments to the particular States in which investors shall reside, with the general statutory principles of which, affecting investments, they should be familiar. If an intermediate course shall be desired, investments may be restricted to the older and well-settled States, in which investors shall have reasons to believe that they will find impartial and ample protection in the laws.

CONTROL OF SECURITIES.—It is self-evident that if the securities for investments shall be entirely beyond the control of the investors there may as well be no securities at all, for they are worthless—securities only in name. The second requisite for the safety of investments (that

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securities shall be within the control of investors), in its absolute sense therefore needs no demonstration. But there are distinctions and amplifications, in the matters of securities and their control, which must be noted.

In the first place, then, the real securities for investments must not be confounded with the mere evidences of the securities, the word "security" being used in the original and proper sense (that which secures, or makes safe), and not in a derived sense of an evidence of debt, such as a bond. If an investor shall purchase a house, the house itself will be the real security for the money invested, and the deed which the investor receives from the vendor will be merely the evidence of the security. If an investor shall loan money on land, the land will be the security, and the bond and mortgage will be the evidences of the debt and of the security. If money shall be invested in the stock of a bank, the capital and surplus of that bank will be the real security and the certificates of stock merely the evidences. In every case, it is the actual security (that property to which eventually investors must look to make good their investments) over which investors must be able, in case of necessity, to exercise control.

With regard to the extent or quantity of control which is necessary for the safety of investments it is obvious that, other things being equal, the

more perfect the investors' control of the security becomes, the safer will become the investments; and the control will be perfect only when investors shall own, or, without fail, may own, absolutely and alone, the entire securities. If an investor shall singly purchase and own free and clear real estate, other conditions having been properly fulfilled, the transaction will be a perfect investment; for the real security will be absolutely within the control of the investor. If an investor shall loan money upon real estate which shall properly satisfy the requirements in other respects, the transaction will be a perfect investment, because the entire security—the real estate—may without fail be reduced to the possession, ownership, and perfect control of the investor if the necessity for such action shall at any time arise. If an investor shall purchase the stock of the most profitable and best-managed railway in the land, the transaction will not be a perfect investment, because the real security (which in this case will be composed of the paid-in capital, rolling stock, undivided profits, and other marketable property belonging to the railroad company) will be beyond the reach and control of the single stockholder, and the investor will be forced to depend upon a fictitious and uncertain security—the market value of the stock. The requisite that investors shall control their securities is, therefore, in the broadest significance, to be

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fulfilled, when such control shall apply to real securities, and when, avoiding all partnerships and joint transactions, investors shall make their investments on their own responsibilities and for themselves alone.

INCOMES FROM INVESTMENTS.—Under the title of the general principles of investment, there remains now to be discussed the consideration that investments shall return fair and regular incomes. At first thought, such a discussion may seem to be of little importance, since investments are uniformly made for the very purpose of obtaining therefrom regular incomes. The importance of a thorough understanding of this consideration will, however, appear without difficulty as the discussion proceeds.

Since the incomes which are to be derived from investments are of such vital importance, it is essential that they shall be sure, or as nearly so as the caution and judgment of the investors can make them; otherwise expressed, incomes from investments must be free from unusual contingencies and possibilities of fluctuation. An excellent rule for the attainment of this essential is that investments shall be made upon securities which are of such a character as to be the last of all kinds of property to feel the effects of depressing circumstances. This condition will be best fulfilled when the securities shall be such as are most

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necessary to those who shall directly pay the incomes. Thus a mortgagor will, if necessary, refuse to pay other debts in order to pay the interest upon a mortgage which is a lien upon his property, because, otherwise, he may lose the house which shelters him and his family; a tenant of desirable premises will make the greatest effort to pay his rent, lest he be dispossessed, and the necessary premises taken from him; but the mortgagor of property which is a mere luxury, will, in case of financial difficulty, first of all, refuse to pay the interest upon the mortgage, and let the luxury go; and the first act of economy of a failing corporation will be the refusal to pay dividends on its stock, in order that necessary expenses may be paid.

The principles which have been explained in the earlier pages of this chapter affect directly the certainty of incomes from investments; for it is plain, since the principal debts and the interest are merely separate parts of the entire obligations of the borrowers, that any rule of conduct which shall secure the principals will also secure the incomes, and the same sound judgment which shall make the purchased or mortgaged securities good and sufficient will also make sure fair incomes from the investments.

In an especial manner the margin of safety will be found to affect the certainty of incomes. If in loan investments the margins of safety shall

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be large, the borrowers will evidently make all reasonable efforts to pay their interest, in order that their equivalent equities in the securities shall not be lost. So, also, if, in purchase investments, there shall be ample margins of safety, small incomes, as compared with the actual values of the securities, will prove to be satisfactory, and the incomes will therefore be the more easily obtainable.

In stating the consideration, which is at present in question, the words "fair" and "regular" have been used as qualifying the incomes which ought to be received from good investments. These qualifications are founded upon practical and almost invariable reasons, and cannot be neglected without risks of serious and injurious results.

The necessity that incomes shall be regular has been sufficiently explained in an earlier chapter of this work, and the quality of regularity will be sufficiently secured by proper agreements with those who are to pay the incomes, and by the application of the principles which have been discussed in the earlier portions of the present chapter.

It may be accepted as a general rule of very wide application that the relative amounts or percentages of incomes from investments will vary directly as the risks which shall be incurred; that is, greater relative incomes will involve greater risks, and smaller relative incomes will

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involve less risks, or will secure greater safety. If a person shall desire to borrow upon real estate so great an amount of money that the margin of safety will be dangerously small, the borrower will be compelled to pay large rates of interest, because the risks will be so great that none but the avaricious will consider the investment. A tenant who shall conduct a hazardous kind of business must pay high rent for his premises, because only greedy landlords will accept such risks of having their property destroyed. So, fraudulent schemes of speculation or of investment are almost always advanced and recommended upon the ground that the profits will be exceptionally large.

But it will be suggested that there may exist, at certain times, exceptional circumstances which will enable investors, with perfect safety, to obtain, at least for short periods, relative incomes which shall be greater than the accepted averages. Undoubtedly there may be such opportunities; but the suggestion tends toward the encouragement of a greed for temporary advantage which is, indeed, much to be deplored. The true theory of investment looks always to the qualities of regularity and permanence, and wisely refuses to consider temporary advantages, which are generally to be obtained only at the cost of corresponding future disadvantages. The mortgagor, who may be compelled by circumstances

to pay temporarily a high rate of interest, will seize with avidity the first opportunity to repay the loan, by obtaining the necessary money from other sources, at a lower rate of interest, and the greedy investor may then be forced to accept trust company rates while searching for new investments. The tenant, whose landlord shall take advantage of special circumstances to demand an unfair rent, will gladly move when the opportunity shall be presented, and with no regrets that, by so doing, he will cause for the landlord the loss and expense which will follow the vacating of the premises. Thus it is that, while exercising all reasonable shrewdness in the search for investments which will pay well, investors should see to it that their incomes shall not be materially greater than the safe, average incomes which are derived from similar investments.

USURY.—The inclination towards avarice which has been manifested by a large proportion of those who are able to loan money to their less fortunate neighbors, and the forced willingness on the parts of the borrowers to agree to almost any rates of interest for the sake of obtaining necessary money without delay, have been the causes of the enactment of laws, in the different States of our country, and in other countries, for the regulation of the rates of interest which may be received for the use of money.

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The term *usury* originally signified the taking of money for the use of other money (or interest) and was considered to be at least a dishonorable practice; it is now defined as the receiving of a higher rate of interest than that which is allowed by the laws. The general effect of the usury laws is to make usury illegal, in some of the States criminal, involving a forfeiture of principal or interest or both, and when criminal, a punishment by fine and imprisonment.

The usury laws of the different States vary considerably with respect to the rates of interest which are prescribed by them (that is the presumed rates when none have been agreed upon), the legal rates of interest varying all the way from five to ten per cent. per annum, and the specified rates which are allowed to be contracted for varying from six per cent. to twelve per cent. per annum.

During recent years there has been a tendency in many of the States to lessen the so-called severity of the usury laws, by allowing contracting parties to agree, either in writing or otherwise, to pay and receive any rates of interest, however high. Such laws have already been enacted in several of the States.

An inquiry into the reasons for, and the causes of, legislation of this kind seems to result in conclusions which are against the security and advantage of loan investments in these States. The

laws which are under consideration cannot be presumed to rest alone upon the broad grounds that our money is our own private property, and that, therefore, we ought to have the right to obtain whatever rates of interest are possible for the use of it; for such contentions have long ago been set aside, though admitted to be technically correct, by the necessities and benefits of public policy. Moreover, it is difficult to believe that a majority of the people will agree to such legislation upon grounds which, to many, will appear to be so abstract. Neither can we believe that the influence of greedy money-lenders in these particular States has been sufficient to overcome the will of the people. The conclusions must, therefore, be that States the legislatures of which have thought it wise to depart so widely from the old and well-settled rules for the prevention of usury have found it necessary to offer unusual inducements for the loaning of money within their borders; or, expressed in different fashion, that there are reasons which tend to prevent the loaning of money, and which the law-makers seek (by means of statutes which may have, upon prudent investors, precisely contrary effects) to overcome.

In conformity, then, with the principles which have been elucidated, all States in which there shall be practically no usury laws, or in which the ordinary rates of interest shall be exceptionally high, should be regarded, at least until the contrary

is conclusively proved, as unfit places for the making of loan investments.

COMPLICATED SCHEMES.—Recent years have brought into notice many complicated propositions, some honest and some fraudulent, for the safe and advantageous investment of capital. Such propositions are the natural results of two conditions which are consequent upon the rapidly increasing population of our country, namely: the increasing difficulty of obtaining safe investments with satisfactory returns, which condition induces investors to entertain methods which otherwise would receive no notice at all; and the steadily increasing difficulty of earning sufficient salaries or business profits for the expensive necessities of the age, which condition constantly incites the inventive genius of the people to the discovery of new schemes, or modifications of old schemes, for the easy acquisition of money. By far the safest method of dealing with all propositions which require, for the demonstration of their feasibility, complicated mathematical calculations, or abstruse reasoning, will be the prompt refusal to consider them, without even so much as attempts to understand them. They are to be regarded, one and all, as schemes which may work out splendidly on paper, but which will seldom, if ever, prove to be successful in actual practice. They are almost invariably

evolved, either by skilful rogues for the purpose of perplexing innocent investors, or by visionary ne'er-do-wells, who, after having striven in vain to make their own fortunes, desire to apply the genius of failure, which they so largely possess, to the imagined benefit of their friends and of humanity at large. And, further, it may be remarked, that there is danger in the simple contemplation of such propositions. For, to many persons, there is a fascination in logical conclusions and mathematical proofs, which, too much indulged, may lead to the acceptance of ruinous so-called investments. The theory of a safe investment must be simple; its initial considerations need be only such as these: so much money is to be placed upon such security, and the returns will be so much per year. Investigation, judgment, and simple calculation will often be required; but the education of one learned in higher mathematics, or in other sciences, or the extraordinary skill of an expert accountant, never.

BASIS OF MONEY.—In all investments where there shall be agreements by which considerable sums of money are to be paid or repaid to investors at future times (therefore, particularly in loan investments) the character or quality of the money which is to be paid will be a most important consideration.

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There are material differences between the moneys of different nations, and there may be equally important differences between the values of money, in the same country, at different times and under different conditions.

A large part of the money of the world is in the shape of paper bills or notes, which are, in effect, printed promises of the particular governments which issue them to redeem them, on demand, in some standard coin which ought to pass universally as actual money. The recognized standard, or basis of money, the civilized world over, is the metal gold, coins of this metal and of the same weight and fineness having more nearly the same actual value or purchasing power, everywhere and at all times, than coins of any other metal.

The actual value of a nation's paper money will, therefore, depend upon two conditions: first, the nation must expressly or impliedly promise to redeem its paper money in gold; and, second, the good faith of the nation must be such that its promises will certainly be made good. If a nation, having the best possible credit, shall promise to redeem its paper money in some inferior or fluctuating metal, the money will evidently not be of the best kind, because the standard of redemption will be low or uncertain as compared with the accepted gold standard, to which it must finally be reduced. If a nation, having no

credit, shall promise to redeem its paper money in gold, the money will be of little actual value, because the nation's promise will probably not be made good. And, finally, if a nation, having perfect credit, shall maintain at all times a gold standard of redemption for its paper money, the money will be of the greatest possible value.

In a similar manner, it may be demonstrated that the quality of the money in the same country may vary, according to the standards of redemption which may be in use at different times, and according to the credit of the nation, as affected by prosperity and peace on the one hand, and by disaster and war on the other.

The money of our country has been (except when affected by wars and financial disorders) and now is of the best possible kind—equal in relative purchasing power to any money in the world; but that such honorable and judicious conditions will always be maintained is, unfortunately, by no means certain. It is, therefore, of great importance to investors that the money with which debtors shall repay loans shall be equal in quality to the money which has been loaned; else investors will lose the differences.

The precautions which will be necessary to guard against such possibilities should be in the form of legal agreements, between investors and borrowers, to the effect that loans shall be repaid in certain designated kinds of money, in all respects

the full equivalents of the money which has been loaned. And, since the money of the United States at the present time is equivalent to gold coin, agreements to repay loans may read: "In gold coin of the United States of America, of the present weight and fineness, or its just and full equivalent."

CHAPTER VI

BONDS AND STOCKS

A THEORETICALLY perfect government, would, in its simplest economic conception, be so conducted that its regular income, from taxes and other sources, would be always and exactly sufficient to pay all its necessary expenditures; or, in other words, a government would be in a financially perfect condition if it could be at all times, entirely free from debt, and without unnecessary surplus in its treasury.

Nations are, unfortunately, subject at all times to bad and injudicious legislation with regard to direct taxation, imposts, tariffs, internal revenues, and general dealings with other nations. These agencies, together with the often incompetent or dishonest characters of public officials, are unceasingly at work, increasing the balances upon the wrong sides of the world's accounts of receipts and expenditures. In addition to such considerations, others, by far more formidable, are the wars to which nations must be liable, and the preparations for war, or precautions against war, which are necessary to the very existence of nations.

To provide regularly, by direct taxation, for such contingencies would evidently be the means of bringing financial ruin to almost every citizen and to almost every nation. The nations of the earth are therefore compelled, at certain times, to borrow immense sums of money in order to meet these extraordinary expenses.

In a similar manner, though on much smaller scales, and indeed with much less of good reason, states, cities, counties, and even villages throughout the civilized world, are continually compelled to run into debt, in order to supply the numerous public improvements and conveniences which the people demand, and for which the ordinary taxes and receipts are not at all times adequate.

BONDS.—For the purpose of securing, or of appearing to secure, the repayment of the loans which are made necessary by the expenses which have been suggested, nations, states, cities, countries, and villages commonly issue written or printed evidences of indebtedness, called bonds. These bonds are solemn obligations, by which the borrowing governments, by the signatures and attestations of their properly qualified officers, promise to pay the amounts stated in the bonds at certain specified times, and with certain specified rates of interest. Attached to bonds of this description are commonly series of coupons, corresponding to the regular intended payments of

interest. When certain interests are due and payable, the corresponding coupons are torn from the bonds, by the bondholders, and deposited in the banks for collection, or are otherwise collected.

By reference to the general principles of investment which have been expounded in the preceding chapter, it will be apparent without difficulty that the conditions which are necessary for the safety of investments will not be fulfilled by Government or municipal bonds. Such bonds do not in general furnish real and ample securities for the funds which are invested, because the actual securities are nothing more than the good faith and credit of the particular geographical divisions of country by which the bonds are issued. Moreover, the securities are not within the control of the individual investors, since they depend, not only upon the action of the bondholders generally, but also, in many cases, upon the action of citizens who are not bondholders.

In the application of these principles, however, a clear and perfect exception must be made in the case of the bonds which are issued by the Government of the United States. Such an exception must be consented to without objection or hesitation because (in the order chosen from a standpoint of utility), first, we are compelled to depend, for all security, not only of property but of life and limb, upon the laws and government of our country, and therefore we can find no better

reliance than its untarnished faith and credit; and second, because it is the highest duty of an American citizen to offer to the flag of our country, and to all that it represents, a loyal and an uncalculating devotion.

Many of our States have uniformly and without delay fulfilled all their financial obligations, and many cities and other divisions of territory have been equally successful in this respect. The bonds of such States, and of the larger cities, which have never failed to meet their obligations, are considered, not only by business men generally, but officially, by the laws of the different States to be safe investments; and the moneyed corporations, which affect in such an important measure the fortunes of the people are allowed to invest in them.

The bonds of counties, towns, villages, small cities, and school districts, at least, ought to be regarded as entirely out of the question for purposes of investment; and if, notwithstanding the conclusions which have been stated, it shall be decided to invest in State bonds, or the bonds of the larger cities, the following considerations may not well be neglected:

The past financial history of the particular State or city should be studied, and if there has been any wavering or deviation from prompt and strict methods of business, or any tendency in that direction, investments should be made else-

where. In many of the States the allowable amounts of indebtedness of cities, villages, etc., are limited by law to certain proportions of the assessed values of taxable property, while in other States there are either practically no such restrictions or the allowable limits are placed at dangerously high proportions. The former class of States should be invariably preferred for purposes of investment in bonds.

Another important consideration is the amount of indebtedness to which the particular State or city is already actually liable. The bonds of States and cities having small amounts of indebtedness must be presumed to be more secure than those of States and cities which are burdened with debts, although under the best circumstances it is possible that future legislation may so bankrupt States or cities that their bonds may turn out to be worthless.

Government bonds, and the bonds of the more prosperous States, are considered to be great conveniences for the purposes of commercial business, and the consequent demand for them often places them at values which are considerably above the par values. It must not be forgotten, however, that this statement holds good only when the bonds in question have considerable time to run before reaching maturity; for it is evident, since at maturity they will be paid or redeemed at their par values, that they will decline to their

par values as the days of redemption draw near. The rates of interest which are paid upon first-class bonds of this description are comparatively low, the general rule that rates of interest vary directly as the risks which must be incurred being applicable for purposes of comparison between different bonds. More especially will this fact prove to be true concerning the actual rates of interest which will be received by the bondholders; for here the premiums at which such bonds are sold must be taken into consideration.

Government bonds are subject, at certain times, to fluctuations in the market values; if, therefore, the normal values shall be known and assured to the satisfaction of investors, and the bonds shall be purchased when there are slight temporary depressions, the incomes which are to be derived from the bonds may sometimes be increased by means of the profits which will be made from the increases in the values. Thus, if bonds, paying interest at the rate of four per cent., and having a normal value of one hundred and twenty, shall, by reason of a temporary depression, be purchased at the price of one hundred and eighteen, held for a period of one year, and then sold at the normal value, the income from the investment, including the profit which is due to the increase in values, will be slightly greater than at the rate of five per cent.

Notwithstanding these facts, it is evident that bonds which will return low rates of interest

(and no others apparently can be safely handled) will in general scarcely come up to the standard of investments which shall return fair and regular incomes. Government bonds may therefore be classed, most advantageously, among temporary investments such as trust companies and savings banks, which are available for the employment of idle money while awaiting more permanent forms of investment.

CORPORATIONS.—The gigantic and costly enterprises of civilization are generally such as to be far beyond the reach and control of single individuals. And this indeed is well; for if single individuals could be possessed of wealth and power sufficient for such purposes, the influences of such individuals for evil would be well-nigh irresistible, and monopolies, in the worst (and proper) sense of the word would be established. For the purposes of such enterprises as are too great for the single individual, it has long been the practice of men to unite the energies and means of many, and thus, by aggregations of power, accomplish tasks which would be otherwise impossible. Such combinations, unrestrained, have long been considered to be dangerous to the general welfare, among other reasons, because of their tendencies towards restraints of trade and industry; and therefore they have been declared to be illegal, as against public policy, except when authorized

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and regulated by laws which are especially enacted for such purposes. And so it has been said that corporations are the children of the State.

Thus have grown up the corporations which, under the control of the laws, are so numerous and so powerful in this and in every other enlightened country.

During recent years there has also appeared a strong tendency to consolidate many small corporations or companies into immense single corporations, which are commonly, though ambiguously, called "trusts."

The formation of corporations and the general principles of the issuing of stocks may be briefly illustrated in the following manner:

Let us suppose that one hundred individuals shall be desirous of forming a corporation for the purposes of an extensive manufacturing business, and that the capital stock of the corporation, actually paid in, is to be one million of dollars, divided into shares of one hundred dollars each, and equally subscribed for by the one hundred proposed members. The requirements of the law (which generally consist of filing certain verified statements with the proper State officers) having been complied with, and the officers of the corporation having been elected, the capital is paid in by the several members, and a certificate, signed and attested by the proper officers, to the effect that the individual is the owner of one

hundred shares, of the value of one hundred dollars each, in the capital stock of the corporation, is given to each of the subscribing members. The manufacturing business is then established and carried on by the directors and officers in the usual manner.

STOCKS.—Shares of stock such as have been described are called “common stock,” and entitle each stockholder to a *pro rata* voice in the management of the business, and to a *pro rata* share in the profits of the corporation, which at certain periods are divided among the shareholders as dividends.

A certain proportion of the shares of stock may be issued with agreements that they shall take precedence of the common shares in the matter of dividends—that is, that a certain dividend be paid upon these special shares before any shall be paid upon the common shares. Such shares are called “preferred” or “guaranteed” stock, and, as a general rule, entitle the holders to no rights or privileges beyond those of the holders of the common stock, except the preference which has been mentioned. In a similar manner “interest-bearing” stocks or shares of stock, upon which the corporation agrees to pay regular and specified rates of interest, may be issued.

If, now, we suppose that the business of the corporation shall have been so well managed

that the net annual profits shall amount to the sum of one hundred thousand dollars, the shareholders will receive dividends at the rate of ten per cent. per annum on their shares of stock, and the shares will be considered to be such profitable investments that they may be sold at a considerable premium, or excess over the par value. But suppose, on the other hand, that very little or no net profit shall be earned by the corporation in question. The market value of the shares of stock will evidently fall below the par value, and the shareholders will suffer losses. If the business shall continue to be profitless, or even worse, failure must result, and the shareholders may lose all that they have invested.

Let us suppose, further, that among the one hundred shareholders there shall be one man of exceptional shrewdness and ability, who, unhindered, would be able to carry the corporation out of its difficulties and into successful methods of business. It is obvious that his voice in the management of the business, against that of the ninety-nine other shareholders, will be powerless; he will therefore be compelled to meet his loss with the others.

Certain corporations, principally railroad and other transportation companies, are authorized by law to borrow money for necessary expenditures, and to issue therefor bonds which are secured by mortgages upon the properties of the corpora-

tions. Such mortgages are usually made to certain persons or institutions as trustees for the bondholders, and in case of default in the payment of principals or interest, the trustees are generally empowered to take possession of and to sell the properties of the corporations which are covered by the mortgages for the benefit of the bondholders.

A brief glance at the rules by means of which we are enabled to determine the safety of investments will be sufficient to show that the stocks of corporations will in general fall so far short of the requirements that they ought, perhaps, not even to be included in the lists of possible investments. In a large number of cases the securities are fictitious, and practically impossible of determination by the single shareholder; the securities are entirely beyond the control of the individual stockholder; the management of the business, which vitally affects the security and the returns is beyond the control of the single investor; and the income itself is practically an unknown quantity. Indeed, what is commonly called investing in stocks, is according to all the proper rules for the safe guidance of investors, merely a speculating in which the speculator appears to be helpless in the hands of manipulators.

There are many different kinds of stocks, varying all the way from the stocks of old and substantial financial institutions, which, year after

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year, have paid to their shareholders handsome dividends, to those of far-off gold mines or silver mines, which may in fact exist only in the minds of the gullible shareholders. So also there are special circumstances under which shrewd and experienced men of business may, with comparative safety, own stocks: as where they shall own controlling interests in the capital stocks of particular corporations, or are officers of the corporations, and are thus able to control the management. But the purposes of this volume will not admit of discriminations in this respect. It is necessary rather to establish rules which will, to the greatest possible extent, avoid the necessity for close discrimination, for which process only a fortunate few are in all respects competent. The conclusion must therefore be that all kinds of stocks, without exception, are to be regarded as dangerous, and are to be avoided always and entirely.

With regard to railroad bonds, which are at least nominally secured by mortgages, and upon which regular rates of interest are promised, it may be said that, in theory, if not always in practice, they are far less dangerous than stocks. The remedy of foreclosure and sale is better than no remedy, even though the securities when finally determined, shall prove to be inadequate. So the intention and the promise to pay regular interest go in the right direction towards proper invest-

ments. But the objections that the actual amounts of securities cannot be ascertained, and that the securities are not within the control of investors, are, nevertheless, insurmountable. Tersely put, the character of such bonds may be expressed in this manner: If the profits shall be sufficient the interest and principals will be paid; otherwise probably not. The safe rule cannot be mistaken; it is to take no such chances, but rather to place our means in the surer investments which will be fully explained in the succeeding pages of this volume.

INVESTMENT CORPORATIONS.—There is a general class of investment corporations, which is of comparatively recent origin, and which, because of the apparent feasibility of the claims of such corporations, and the widespread damage and loss of which such corporations have been the means, is deserving of special though by no means of flattering mention.

These organizations, acting frequently under imposing and grandiloquent names, and protected in some of the States by laws, or adjudications which ought not to exist, vary considerably in the details of management. The general principles of this class of corporations, may, however, be described as follows:

The various investors place their money in the hands of the particular corporation with the under-

standing and solemn agreement that the funds are to be loaned upon first-class real-estate mortgages only, not in sums corresponding to the particular amounts which are subscribed by the different investors, but in such lump sums as may be most advantageous. The different investors, therefore, cannot receive the actual mortgages as evidences of security for their money, but receive instead shares of stock or bonds issued by the corporation, and upon which the corporation agrees to pay rates of interest which are considerably higher than are consistent with real safety. In many cases the funds are loaned upon farm-lands in far-away States, and for this reason alone, though the affairs of such a corporation may be carried on with fair discretion and with absolute honesty, the chances will be largely in favor of loss and failure. And when the opportunities for rascality, which such methods will not fail to offer, shall be taken into consideration, the large amounts of money which corporations of this kind have been able to obtain (and often, as far as the investors are concerned, to lose) will indeed be surprising.

An application, however cursory, of the rules which have been explained will at once condemn this entire class of corporations as extremely dangerous. Indeed, ordinary intelligence ought to suggest that such corporations are often originally dishonest. But the persuasive powers of the talented promoters of such enterprises have often

availed for the subjugation of reason. Investors have been informed that in this way only can small amounts be loaned with perfect safety and with high rates of interest; that such large corporations have exceptional facilities for obtaining good loans and for properly estimating the qualities of securities; that the officers and managers of the corporations are men of large means and experience who are themselves heavily interested in the corporations; and that the shares of stock or bonds are merely forms which are necessitated by the characters of the corporations, while the actual effect of the arrangements is to make the investors not speculators in the stock of the corporations, but *bona fide* holders of first-class mortgages. And so, many persons, forgetting the plain facts that mortgages over which the mortgagees have no control are mortgages only in name, and that actual evidences of the investment of funds in the manners which are promised are indeed difficult to obtain, have suffered ruinous losses, only to enrich the ingenious and unprincipled managers of these loan-corporations.

Other forms of corporations claiming to accomplish the purposes of investments are to be found, and it cannot be doubted that future years will bring forth still others which will develop methods and principles which will then appear to be novel and practicable. But it will invariably appear, only the more conclusively by the careful

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examination of special cases, that the faithful employment of the simple and convenient rules by which the safety of investments is to be determined will safely guide investors around the pitfalls which will always beset their ways, and into the comparative serenity which may thus happily be attained.

CHAPTER VII

MORTGAGES

THE word "mortgage" signifies a *dead pledge*, the name being derived from the fact that the mortgagor holds possession of the mortgaged land, while in the *vivum vadium*, or *living pledge* of former times, the mortgagee held possession of the land and applied the rents and profits to the payment of the debt.

A mortgage is a lien upon real estate which is given to secure the payment of a debt, usually money. It is, in form, an absolute conveyance of the land by the debtor (the mortgagor) to the creditor (the mortgagee) with an agreement to the effect that, if the borrowed money shall be repaid according to the terms which are specified, and if certain other agreements shall be fulfilled, the conveyance shall be void, otherwise to be in full force and effect.

Strictly speaking, the legal effect of such an agreement will be to forfeit all claims of the mortgagor upon the mortgaged land as soon as any default shall be made by the mortgagor; or, in other words, the slightest failure on the part of

the mortgagor to perform his agreements will deprive him of his land and give it outright to the mortgagee. And such, in fact, was formerly the law. But the courts, recognizing the great severity of the law in this respect, gradually overcame it, and finally decreed that the mortgagor shall have the right to redeem the mortgaged land, by the payment of the borrowed money and the necessary expenses, at any time after default, until such right of redemption shall have been cut off by regular process of law. This right to redeem the land after default has been made is called the mortgagor's *equity of redemption*, and the proceeding, on the part of the mortgagee, which finally destroys the equity of redemption is called the *foreclosure of the equity of redemption*, or simply *foreclosure*.

For all practical purposes, then, a mortgage may be described as an agreement between a debtor and a creditor, to the effect that the debtor will repay the borrowed money at a certain time, with interest at a certain rate, and that, in case of his failure so to do, the mortgagee may, by process of law, sell a certain designated piece of land and, out of the proceeds, repay the debt with the interest which has been agreed upon, and the expenses of the proceeding.

It will be observed that two principal elements are present in the transaction of mortgaging a piece of land; first the debt, which is the foundation

of the transaction, and second the lien upon the land which is created for the purpose of securing the debt. The lien upon the land is created by the mortgage deed (commonly called simply the mortgage) which is placed upon record in the county where the land is situated, as a notice to the public, and the debt is created by the delivery of the borrowed money to the debtor. For the purpose of evidencing the debt, however, the debtor executes and delivers to the creditor a bond, which is a legal and binding acknowledgment of the debt, and a promise to repay the same with interest. Thus the transaction has come to be termed an investment in *bond and mortgage*.

In some States the evidence of the debt accompanying the mortgage is a promissory note instead of the more solemn bond, but the effect is practically the same in either case.

EQUITIES.—In all cases there is, or at least is presumed to be, a margin or an excess in the value of the mortgaged land over and above the amount which is secured by the mortgage; this margin or excess of value is termed, rather ambiguously, the mortgagor's *equity* in the land.

The equity, notwithstanding the absolute form of the mortgage, still belongs to the mortgagor, and may itself be mortgaged. So there may be any number of mortgages upon a piece of land, termed the first mortgage, the second mortgage,

the third mortgage, and so on, each having its accompanying bond, and each, after the first, attaching to whatever of equity remains over and above the amounts of the prior mortgages.

It may be surmised from these statements, no less than from a general conception of the principles of equity, that a mortgage will take precedence of only such liens as may be put upon the mortgaged premises after the lien of the mortgage has attached; or in other words, the prior lien, in point of time will take precedence over all subsequent liens, excepting only such public liens as by law cannot be interfered with, such as taxes and assessments. And so, if a judgment, which is a lien upon real estate, shall exist against a mortgagor at the time of recording a mortgage against his real estate, the lien of the judgment will take precedence of the mortgage, and the judgment-creditor may, by process of law, sell the mortgaged premises to satisfy his lien, without regard to the mortgage.

There is, however, one somewhat remarkable exception to this general rule, which arises in the case where a purchaser of real estate shall give back to the vendor, at the time of the execution of the deed, a mortgage to secure a part of the purchase-price of the real estate. Such a mortgage is called a *purchase-money* mortgage, and takes precedence of judgments which may exist against the mortgagor at the time. The theory upon

which the principle of the purchase-money mortgage is founded is, that the deed and the mortgage are simultaneous in point of time, and that therefore there is no period of time existing between them during which judgments can attach.

For these reasons, although the existence of judgments and such liens should be fully determined by examinations of titles, purchase-money mortgages may be considered as possessing advantages over mortgages of the ordinary description.

SAFETY OF MORTGAGES.—If we presume a perfect mortgage, or, otherwise expressed, if we assume that all the conditions upon which the quality of the mortgage depends shall be the best possible for such a form of investment, we shall discover that the most rigorous and searching application of the general rules of investment will fail to disclose any serious objection to it. Such a mortgage will be in all respects a perfectly safe investment, because, first, there will be a real and ample security of the best character; and, second, the security will be perfectly within the control of the investor, for the investor alone can foreclose the mortgage at any time after a default shall have been made. The returns from such an investment will be fair and regular because of the agreement, supported by the penalty; and sure, because if, by any chance, the mortgagor

shall fail to pay them, the ample security will not. In addition to these qualities, it may be said that a mortgage is a true loan-investment, having all the attributes of an investment and none of the attributes of a speculation. It costs the investor practically nothing, all expenses being paid by the mortgagor; and comparatively little time and effort will be required to keep the investor at all times informed as to the condition of the investment in all important respects.

A perfect mortgage is, then, a perfect loan-investment. But a method, ever so perfect in itself, may be rendered imperfect by neglecting the considerations which are necessary to make it perfect, or by misapplications of the exact principles which are involved. So, mortgages may be as nearly perfect as investments can be made, they may involve considerable risks and considerable difficulties, or they may be of such characters as to cause certain losses of interest and of considerable portions, if not all, of the principals, according as are applied the principles which have been explained in a general manner, and which will now receive a particular consideration in connection with the subject which is at present under discussion.

As we have seen to be the case with all kinds of investments in general, the two great considerations affecting mortgages are that they shall be, as nearly as possible, absolutely safe, and that they

shall return fair and regular incomes. With regard to the latter of these considerations, mortgagees have but to agree with mortgagors concerning the rates of interest and the times and manners of payment, and to include such agreements properly in the written instruments, and the considerations which will go to secure the payment of the principals will, at the same time, provide securities for the proper and regular payment of the interest.

The safety of mortgagees will depend upon many particular conditions, all of which may be included in two general requisites, namely: the securities must be in all respects good and sufficient, and the requirements and precautions of the law must be carefully complied with.

Proceeding now to investigate the conditions which go to make up the first general requisite, we shall find the first to be that the title of the mortgagor to the security (the land) must be perfect. To this end, the whole title to the mortgaged premises must be in the mortgagor; that is, the mortgage must cover the whole title, not a half-interest or an undivided interest of any kind; for it is evident that if money shall be loaned on a part interest in certain land, and the mortgagee shall be compelled finally to foreclose the mortgage and to buy in the premises, the mortgagee will then be in the position of a part owner with the remaining owners, and the control of the security will be only partial.

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The mortgagor's ownership of the land must be absolute. That is, he must own the land in fee-simple; for a mortgage upon an estate for life, a leasehold or other conditional or uncertain ownership, will necessarily be a poor investment, the real security (the land itself) being beyond the control of the investor.

In order that the mortgagor's title to the mortgaged land shall be perfect, the land must be free and clear of all liens, incumbrances, and claims; or, which is equivalent, the mortgage must be a lien which is prior to all others upon the land. This rule will have the effect of precluding all except first mortgages from the consideration of investors, and an investigation of the character of second and other subsequent mortgages, as a class, will prove, independently of the general rules, the practical value of such a result. As has been explained, a second mortgage attaches merely to the equity in the land, which may remain over and above the first mortgage. If, therefore, the first mortgagee shall foreclose the first mortgage, the second mortgagee, receiving notice of the foreclosure, must see to it that the land, at forced sale and possibly at a disadvantageous time, shall bring a price which shall be high enough to pay both mortgages; otherwise the second mortgage will be cut off and partly or entirely lost. And similarly, if it shall become necessary for a second mortgagee to foreclose her mortgage, she must be

prepared to buy in the land and to pay the amount of the first mortgage in cash; else her second mortgage will probably realize nothing.

Many other incumbrances and imperfections of title may exist which may seriously injure or entirely destroy the value of mortgages as safe investments; but these, and, in fact, all the circumstances and conditions which may affect titles, can be discovered only by the lawyers and expert searchers, who ought in all cases to be employed for the thorough examinations of titles. No less care should be taken in the examination of titles to the securities upon which loans are to be made than if it were proposed to purchase the lands outright; for the only safe theory upon which investments in mortgages can be made, is that the mortgagees will eventually be compelled to foreclose their mortgages, and thus finally become the absolute owners of the mortgaged lands. In some cases the amounts of mortgages may be so small that the expenses of examining the titles to the lands may be regarded as hardships which it will be unnecessary to put upon the mortgagors. Such cases should, in fact, never exist; for if a loan shall be so small as not to require proper precautions, the formality of a bond and mortgage may be regarded as absurd. The favor of a small loan should be refused, or it should be generously accorded without other security than the promise of the borrower to return it.

A second condition which is essential to the safety of mortgages is that the securities shall have ample actual values; and in this respect actual values must be understood to signify values which may be quickly, and at any time, realized from the securities. This matter has been discussed in a general manner at considerable length in a previous chapter of this work; it now becomes necessary to examine in detail the various facts and circumstances which may affect the values of securities in the particular case of mortgages upon real estate.

The first inquiry in the line of this examination must be concerning the laws which govern mortgages, or the laws of the particular States in which proposed investments in mortgages are to be made; for, be the cash value of mortgaged lands ever so great, the lands will be a worthless security if the laws shall be such that mortgagees cannot foreclose their mortgages if such action shall at any time become necessary.

The laws of the different States affecting mortgages are so various, and at the same time dependent to such an extent upon the changing moods of the legislatures, that it has not been considered advisable to refer to them specifically here. In the chapter which is devoted to the discussion of the general principles of investment, reference has been made to the fact that in certain States there is a tendency to discriminate against non-resident

investors, and that laws have been enacted probably for the distinct purpose of interfering with the remedies of investors after the investments have been made. With regard to mortgages, such laws may be described generally in the following manner: They may give to mortgagors the right to redeem mortgaged lands for considerable times—one or two years—after the mortgages shall have been foreclosed, thus making lands in the hands of mortgagees unsalable and useless for the time being at least. In some cases mortgagors are permitted to retain actual possession of lands during the periods which have been referred to, and the results in many cases will be that, when investors shall finally come into the possession of their securities, the securities will be found to be reduced to states of extreme dilapidation, which no amount of caution on the parts of investors will be able to prevent. Such iniquitous laws appear indeed to be deliberate challenges to the base and revengeful tendencies of dishonest debtors, and should meet with nothing but outspoken condemnation from all good citizens.

Probably to a greater extent than in any other form of loan-investment, the safety of mortgages is affected by the general rule that the rate of interest which shall be received will be directly proportional to the risks which must be incurred. And the reasons which sustain the rule are especially clear in the case of mortgages.

First-class mortgages on real estate being almost universally considered as among the best possible forms of investment, there is very seldom any lack of money awaiting such investments. The supply often exceeds the demand, and the result of such conditions is, as always, to decrease prices, or, in the case of mortgages, to lower the rates of interest. The actual values of real estate in various localities are not difficult to ascertain, and are therefore comparatively well known to investors generally. Hence, just in proportion as relative securities shall become poorer, the gross amount of money which is available will become less. In other words, just in proportion as securities shall become poor, the demand will exceed the supply of money, and the price of money—the interest which must be paid for the use of it—will increase. There is naturally a much larger number of applications for money to be borrowed upon poor securities than of opportunities for really first-class loans; because in the majority of cases those who wish to borrow money do not own first-class real estate, and, *vice versa*, those who own first-class real estate do not wish to borrow money. And in addition to such natural conditions is the fact that there are many shrewd and dishonest persons who undertake, quite often successfully, to borrow on mortgages such large amounts that they can allow the mortgagees to foreclose their mortgages and still retire from the transactions

with profits, and to the eventual losses of the mortgagees.

BUILDERS' LOANS.—So-called "builders' loans," and mortgages which are made to secure future advances, are largely responsible for results of this description. They are generally made in the following manner: A person claiming to own valuable unimproved real estate free and clear may desire to improve the real estate by the erection of buildings of certain descriptions, and to borrow the money which is necessary for the erection of the buildings upon the security of a mortgage, at a high rate of interest and covering both land and buildings. To this end, the mortgage is at once made and recorded, with an agreement that the mortgagee shall advance to the builder certain amounts of money at certain stages in the erection of the buildings. If, now, the builder shall be dishonest, he will attempt, by every possible means which is known to such tricksters, to hold back the payment of all bills which are due for work done upon the buildings, and, at the same time, to receive as much money as is possible from the mortgagee. Just as soon as these conditions shall have reached the maxima, and the builder may make a profit by so doing, he will throw up the whole contract, and leave the astonished mortgagee to foreclose her mortgage and to find herself finally possessed of a half-

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finished, and badly constructed building, which is almost buried beneath the liens of contractors, mechanics, and material-men.

LOCALITY.—The actual values of the lands which form the securities for mortgage investments will depend directly upon the localities in which they shall be situated, upon the purposes for which they shall be used and intended, and upon the characters and kinds of buildings and other improvements which shall be erected upon them. With regard to the question of locality it may be remarked that large cities, which are established as industrial centres, and in which the populations, as well as the number and extent of industries, are steadily increasing, will prove to be the most advantageous; while farming districts and small villages which are situated at considerable distances from large cities will furnish the poorest of all mortgage-investments. In the one case, real estate values must increase steadily in the main; in the other, experience has indicated beyond doubt that the general tendency of lands will be to decline in values for many years to come. Also the fluctuations in values will be less in large cities than in rural districts, and in the former it will be by no means as difficult to find ready cash purchasers of real estate in times of depression.

An exceedingly dangerous practice is the in-

vesting of money in mortgages upon distant timber lands and mineral lands. The danger in the former kind of securities lies in the facts that destructive fires are frequent occurrences in heavily wooded sections, and that the values of such lands, after the timber shall have been removed or destroyed, will be exceedingly small. It is also possible that timber-thieves may steal enough valuable timber from unguarded lands to take away materially from the value of the land. So-called mineral lands may be very valuable property, or they may be entirely valueless, and none but experts will be able correctly to determine such values. Consequently the opportunities for fraud which are offered by this kind of real estate are exceptional. Many a mortgagee of supposed rich iron-lands, or lands abounding in more precious metals, has found at last that the valuable metals existed only in the representations of the promoters, and that the security for the mortgage is actually worthless. But the rules of investment, which have already been deduced and explained in this chapter, and in the chapter on the general principles of investment, will be found sufficient, if properly applied, to prevent the possibility of this particular kind of disaster, no less than of others of equally serious natures.

IMPROVED AND UNIMPROVED REAL ESTATE.—
As a rule, applicable to the large majority of cases,

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it may be stated that improved real estate will prove to be a better security than that which is unimproved. And the most practical reason for the statement is that improved real estate, is, in a measure at least, self-supporting, that is, its rents and profits will pay, at the best entirely and at the worst partially, taxes, interest, and other necessary expenses; while unimproved real estate is generally, in this respect, a dead weight upon the owner. Real estate which is judiciously improved will return to the owner a fair income over and above all necessary expenses, and it is plain that the more profitable a building may be to the owner, the better will be the security of the mortgage.

The comparative values of similar kinds of real estate, having reference both to the locations and to the kinds of improvements, in different cities, will be well worth a considerable study. Thus the differences in the values of pieces of real estate which seem to have identical values, because of the apparently equal values of the lots and the assured equal costs of the improvements, when situated in different cities will often prove to be astonishing to those who are unaccustomed to such comparisons. These remarkable variations are to be explained by the facts that the marketable values of similarly located vacant lots in different cities differ widely because of the different requirements and demands of business, and

that the values of similar buildings which are located in different cities will vary widely because of the differences in the amounts of rentals which may be obtained.

If investors, who have been accustomed to loaning money on mortgages in cities where real estate values are comparatively low, shall undertake to invest in mortgages in cities where these values are high, the result of a failure properly to consider these facts may be the refusal of first-class applications because of the investors' suspicions that the valuations are in fact much too high. And, on the other hand, if relative actual values in the cities where proposed investments are to be made are much lower than in the cities where the investors have been accustomed to loan money on mortgages, the probable result of neglecting the considerations in question will be inadequate securities and consequently bad investments.

Careful comparisons of various values in cities where proposed investments are to be made, in connection with inquiries into the business advantages and renting capabilities of the real estate, will in all cases lead to satisfactory solutions of such apparently difficult problems.

The particular kind of business which is to be carried on in a building upon which it shall be proposed to loan money is worthy of some notice; for the wear and tear upon buildings, and conse-

quently the durability of the buildings, will be very different for different branches of business. Thus, taking extreme cases, for the sake of a better illustration: it will be evident that a retail jeweller will preserve the premises which he occupies in good condition, for his own benefit, if for no other reason; while a dealer in heavy materials, such as iron pipes or plumbers' supplies, will necessarily leave his premises in a damaged condition.

PROTECTION AGAINST FIRE.—While a mortgage upon a piece of land, upon which is erected a building, will cover equally both the land and the building, and while, for the most practical purposes, the two are properly considered as together forming one piece of real estate and one security for the mortgage, yet there is a distinction between the two, which must not be neglected. The land is permanent, and, presuming, as a matter of course, that all necessary legal precautions have been taken, cannot fail to remain as a definite security for the mortgage. But not so the building. Fire may at any time entirely destroy it; extraordinary efforts of nature, such as lightning, cyclones, or earthquakes, may demolish it; or extreme and wanton abuse may render it almost useless.

To protect mortgagees perfectly against possible injuries to their securities, as well as to protect the equities of the mortgagors in the buildings

which are erected upon mortgaged premises, from any and all threatened dangers, is practically an impossibility. But protection against fire will be afforded, to a more or less satisfactory extent, by the ordinary system of fire insurance; and certain precautions, which are to be embodied in the mortgage deeds, to which a sufficient reference will be made in the proper place, will to a certain extent remove other dangers.

In all cases where improved real estate shall be mortgaged, the mortgagors should be required to agree to keep the buildings upon the mortgaged premises insured against fire for the benefit of the mortgagees. Insurance policies which shall be issued in pursuance of such agreements should state the names of the mortgagees by including a clause like the following: "Loss, if any, payable to Mary J. Doe, mortgagee, as interest may appear."

Mortgagees must see to it that the amounts of the policies shall be sufficient; that the insurance companies shall be satisfactory; and that the descriptions of the mortgaged premises which are contained in the policies shall be correct.

An important clause which should be attached to the insurance policy of mortgaged premises is known as the *mortgagee clause*. It is an agreement on the part of the insurance company that the insurance, as to the interests of the mortgagee, shall not be invalidated by any act or neglect of

the mortgagor or owner, provided the mortgagee shall pay the premiums if the mortgagor shall fail to do so, and provided the mortgagee shall notify the insurance company of any changes of ownership in the mortgaged premises, and of any increases of hazard which shall come to the knowledge of the mortgagee.

BONDS ACCOMPANYING MORTGAGES.—The bonds (or promissory notes) which accompany mortgages, as evidences of the debts, are, in themselves, valid obligations, upon the strength of which the moneys which have been loaned may be recovered by means of ordinary lawsuits, provided the responsibilities of obligors shall be sufficient. Nevertheless, as has been sufficiently indicated in the preceding pages, such facts must not be at all relied upon in the consideration of the values of securities for mortgages, except that, as possible additional securities, bondsmen, who shall have the reputations and appearances of responsibility, should be, of course, preferred.

If the real estate upon which money has been loaned shall be an ample security, evidently it will make little difference to what extent the obligor, in a bond or note, shall be responsible; and if the real estate shall not be a sufficient security, it may be considered a foregone conclusion that the mortgagee will suffer loss, so small is the proportion of obligors of this kind who will be

found to be serviceable for the purpose of making good deficiencies. Still, since in theory the obligor is bound to pay the debt, and is liable for any deficiency which may remain after foreclosure and the sale of the mortgaged premises it will be worth while that responsible obligors be chosen if the possibility of choice shall exist. The common practice is that the owner or owners of real estate upon which money shall be loaned (the mortgagor or mortgagors) alone shall execute the bond of note which accompanies the mortgage; but if there shall be a willingness on the part of mortgagors and their friends, mortgagees may well obtain bonds or notes upon which there shall be several obligors, thus increasing the chances of recovering possible deficiencies.

In a large number of cases the owners of mortgaged premises and obligors on the accompanying bonds become different persons, because of one or more transfers of the mortgaged premises subject to the mortgages. In such cases the obligors on the bonds will still be liable for the debts, as if no transfers had been made, unless actually, or by construction of law, they shall be released from liability by some acts on the parts of the mortgagees. It will therefore be the part of wisdom in such cases to have no understandings or agreements with bondsmen which may be construed as considerations for their releases from the obligations of the bonds.

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MARGIN OF SAFETY IN MORTGAGES.—In the simplest manner of statement, the margin of safety in the case of a mortgage upon real estate (the difference between the actual value of the mortgaged premises and the amount of the mortgage), must be such that the real estate will, under the disadvantages of a forced sale, and probably in a time of business depression, surely sell for an amount which will be sufficient to pay all prior charges which may exist against the real estate, the expenses of the foreclosure proceeding, and the amount of the mortgage with the interest which may be due upon it. The amounts of these various items will depend to a considerable extent upon the lenity which has been accorded the mortgagor in any particular case. Thus, if the mortgagee shall generously (or carelessly) allow the mortgagor to remain in possession of the mortgaged premises for a long time after default shall have been made in the payment of interest, the arrears of interest certainly, and the arrears of taxes and assessments probably, will be greater than if the mortgage shall be foreclosed shortly after the default. Therefore, if the margin of safety shall be small, the mortgagee must, for her own protection, allow the mortgagor but little leeway, with respect to such items of expense; while if, on the contrary, there shall be an ample margin of safety, it will be but ordinary generosity to allow to the mortgagor a reasonable time

during which he may recover from temporary difficulties, and thus save his equity in the mortgaged premises, taking care, however, that the interest of the mortgagee shall not be actually placed in jeopardy.

The rule of safety which is universally recognized among business persons, and which, in the majority of cases, will be strictly adhered to, will require that obligations of all kinds shall be promptly met, and that little lenity shall be allowed. The disposition to be generally indulgent toward debtors is, without doubt, one of the most dangerous of tendencies, and at the same time a disposition which will be, for the most part, but poorly appreciated. We must, therefore, insist upon reasonably prompt fulfilments of all business obligations, except in rare cases in which we can, without injury to our own interests, be of actual benefit to others who shall be worthy of our generosity.

A general rule among the investors of a score of years ago was that, in times of depressed land values, fifty to sixty per cent. should be the proper ratio of a loan upon real estate to the value of the premises, and that this ratio, in times of inflated values, must be reduced to from forty to fifty per cent. At the present time, an owner of desirable real estate in the city of New York (or probably in certain other cities) will have little difficulty in obtaining a loan which will amount

to from seventy to eighty per cent. of the value of the real estate, and this at the rate of five per cent. interest.

A brief consideration of this question will make clear the fact that elements which will have important effects upon the determination of the safe ratios of loans to the values of the real estate will be the general characters of the premises with regard to fluctuations in values and utility for the purposes of renting. In many of the large cities there are pieces of real estate which, because of their desirability for the purposes of business or of first-class residences, have maintained and do maintain very nearly or quite uniform values, regardless of the condition of real estate values in general. It will be apparent at once that much larger proportional amounts may safely be loaned upon such securities than upon securities which will necessarily be subject to violent fluctuations in values. The question of stability of values is, therefore, a very important one, and proposed mortgagees, when fixing upon valuations of real estate which shall be intended to secure investments must consider carefully whether the prices of such real estate which are common at the time of the valuations shall be higher or lower than the averages of considerable numbers of periods, both of depressed and of inflated values.

LEGAL PRECAUTIONS.—The general requisite

for the safety of mortgages which remains to be discussed is that the requirements and precautions of the law shall be carefully complied with; and, although all the requirements of the law are presumably also precautions, it must be noticed that the actual requirements of the law do not include all the legal precautions which may be necessary. The legal precautions, then, which are actual requirements of the law,—that is, without which mortgages will be practically void,—are that the legal papers shall be drawn and executed according to the prescribed forms; that the entire proceedings shall be lawful in their natures (not usurious or in other respects fraudulent); and that the mortgages shall be recorded in the public offices which are provided for such purposes.

Concerning the first two of these requirements, it is necessary only to remark that the first may safely be left to the lawyers who must necessarily have the legal charge of such matters, and that the second will be provided against by the exercise of common and easily distinguishable honesty.

As far as the validity of agreements between mortgagors and mortgagees is concerned, the recording of mortgages is not a legal necessity. But, for the purpose of giving notice of the mortgages to all other parties, this proceeding is necessary, and the only one which is regularly provided by law. And since, without such public notice,

mortgages will not be protected by the laws against sales of the mortgaged premises to persons having no knowledge of the mortgages, or against subsequent mortgages which may be made to persons who shall be equally innocent in that respect, it is evident that the recording of mortgages is a proceeding of vital importance to mortgagees. In all cases, mortgages should be recorded without unnecessary delays, even of the shortest durations, after they have been executed by the proper parties; they are usually recorded by the lawyers of the mortgagees, in order to make sure that such an important requisite shall be properly attended to.

Since the bonds or notes which accompany mortgages are merely the written evidences of the debts which exist between the mortgagors and the mortgagees, and do not in themselves establish liens against the mortgaged real estate, they are not intended to be recorded, but should be carefully preserved, during the lifetimes of the mortgages, among the important documents belonging to mortgagees.

The legal precautions which are necessary for the safety of the mortgages, although not actually required by the law to establish their validity, are that the bonds and mortgages shall express, in proper language, the intentions of the parties, and that they shall include all the necessary covenants and agreements which have been devised for the benefit of mortgagees.

AGREEMENTS IN BONDS.—The principal parts of a bond which accompanies a mortgage, or, as it is sometimes called, a real estate bond, are the *penalty*, the *condition*, and the *covenants*.

The penalty states that the obligor (by name) is held and firmly bound unto the obligee (also by name) in a sum which is usually double the actual amount of the indebtedness, to be paid to the obligee or to his or her heirs, executors, administrators, or assigns; for which payment the obligor binds himself or herself and his or her heirs, executors, administrators, and assigns.

The condition of a bond states that, if the obligor or his or her heirs, executors, administrators, or assigns shall pay to the obligee, or to his or her heirs, executors, administrators, or assigns, a sum of money which is equal to the actual amount of the indebtedness, upon a certain date, with interest at a certain rate, and payable at certain times, the obligation shall be void; otherwise to remain in full force.

The following covenants or agreements will be sufficient in all ordinary cases to furnish the necessary legal protection for the mortgagee:

(1) An agreement that if default shall be made in the payment of interest, taxes, or assessments, the principal sum, with all arrears of interest, shall, at the option of the obligee, or his or her legal representatives or assigns, immediately become due, although the period limited in the bond

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for the payment of the principal may not have expired.

(2) An agreement that, if default shall be made in the payment of the principal sum, interest, taxes, or assessments, the obligee and his or her legal representatives or assigns shall have the right forthwith to take possession of the mortgaged premises and apply the rents, issues, and profits to the payment of the debt; and also that the obligee and his or her legal representatives and assigns shall have the right, after such default, to have appointed by the court a receiver, who shall take possession of the mortgaged premises pending foreclosure proceedings.

(3) An agreement to the effect that the obligor shall insure the mortgaged premises in approved insurance companies, and to an amount which shall be approved by the obligee, and that, in case of a failure to do so, the obligee may insure the premises and charge the expenses against the obligor as an additional lien upon the premises.

The covenants or agreements which have been described are generally considered to be sufficient for purposes of reasonable security, and make up what passes generally for an ample bond. But there is another agreement, not at all common in bonds and mortgages, which under certain conditions may be of very great importance. In the chapter on general principles of investment, the subject of the relative values of money, as affected

by the general credit of the government which issues the money, and the standard to which the money shall be finally reducible, has been discussed at some length. It is evident that the conclusions which have been reached in that discussion will be applicable in their strictest senses to loans which are secured by bonds and mortgages. Therefore if, in the judgment of an investor, there shall be a reasonable possibility that the loan will be repaid in depreciated money, or that the interest will be paid in money of a lower value than the standard, an agreement should be included in the bond to the effect that the principal sum and the interest shall be paid "in gold coin of the United States of America, of the present weight and fineness, or its just and full equivalent."

AGREEMENTS IN MORTGAGES.—The principal features of the mortgage which is to accompany a bond such as has been described may be briefly stated in the following manner:

The mortgage should properly name the parties, and state that the mortgagor is indebted to the mortgagee in a certain sum of money, secured to be paid by a certain bond, conditioned for the payment of the said sum, at the time, and with the interest, specified in the bond. There should be a clause conveying to the mortgagee and to his or her heirs and assigns forever the mortgaged premises, which should be carefully and accurately

described. Next in order should come the proviso that if the mortgagor shall pay the sum mentioned in the condition of the bond, and the interest as provided in the condition of the bond, then the mortgage and the estate granted by it shall cease, determine, and be void. The mortgage should then contain the same agreements as the bond, and in addition, agreements that the mortgagor will forever warrant the title to the mortgaged premises, and will execute any other instruments which may be necessary for the further assurance of the title.

A mortgage may also contain a clause to the effect that the mortgagee may foreclose the mortgage if the mortgaged premises shall be allowed, by the mortgagor, to become dilapidated or ruinous in condition; although such a clause is not very common, for the reason that, if correct conclusions with regard to the value of the mortgaged premises and of the margin of safety have been reached by the mortgagee, ample provisions will have been made for any damage to the mortgaged premises which may reasonably be apprehended.

ASSIGNMENT OF MORTGAGES.—The sale or transfer of the rights of a mortgagee in a bond and mortgage is called an *assignment* of the mortgage. The general effect of an assignment of a mortgage is to transfer to the assignee all the rights which

the assignor had in the bond and mortgage before the assignment was made, and all the rights in the bond and mortgage which the assignor would have had in the future, if the assignment had not been made. The legal instrument by which such a transfer is made, also called an assignment of mortgage, is a written instrument, signed, sealed, and acknowledged by the assignor, and recorded in the same manner as a mortgage.

An assignment of a mortgage should state that, for a good and valuable consideration, the party of the first part (the assignor) grants, bargains, assigns, etc., to the party of the second part (the assignee) the mortgage (carefully described by date, names of parties, and place and date of record), together with the bond therein described, and the money due or to grow due thereon, with the interest; and that the assignor constitutes the assignee his or her attorney to act as the assignor might have acted if the assignment had not been made.

DISCHARGING OF MORTGAGES.—Mortgages upon real estate may be discharged or destroyed in three different ways: by *merger*, by the payment of the mortgage debts, or satisfaction of the mortgage, and by foreclosure. If a mortgagee shall purchase outright the mortgaged real estate, the mortgage will be destroyed; or, as lawyers say, the mortgage will *merge* in the absolute ownership; for it is

absurd to suppose that persons may hold mortgages against themselves. But evidently the theory of merger must apply only to the particular mortgages of which the purchaser of the mortgaged premises was, before the purchase, the owner. Therefore if the mortgagee of a second or third mortgage shall purchase the mortgaged real estate, only the second or third mortgage will merge, and the purchaser will take the real estate subject to all other undischarged mortgages and liens.

When a mortgagor shall pay the debt for the security of which the bond and mortgage have been made, the mortgagee must surrender to the mortgagor the bond and mortgage; and, for the purpose of discharging the mortgage upon the public records, a legal paper, which is called a *satisfaction*, or a *satisfaction-piece*, must be given to the mortgagor. A satisfaction-piece is a certificate, signed and acknowledged by the mortgagee, to the effect that the mortgage (described in the same manner as in an assignment of mortgage), is paid, and that the mortgagee consents that it be discharged of record. The mortgagor must then file the satisfaction-piece in the public office where the mortgage is recorded, and the mortgage will be accordingly discharged.

FORECLOSURE OF MORTGAGES.—As has been already explained, the remedy of a mortgagee for the non-payment of interest, taxes, or the

principal amount of a mortgage when due, is the foreclosure of the mortgage. The foreclosure of a mortgage is a legal proceeding of a technical and somewhat difficult character, varying somewhat in the different States. A general description of the proceeding, sufficiently explicit for the purposes of this work, may be given in the following manner:

A legal action, upon proper notice to the mortgagor and to other interested parties, is brought in the proper court, in which action all the facts concerning the bond, mortgage, and default are placed before the court, with a demand for judgment that the mortgagor and all subsequent lienors shall be barred and foreclosed of all rights in the mortgaged premises, and that the premises may be sold, according to law, for the payment of the principal debt, interest, and expenses.

The final result of a foreclosure proceeding is that the mortgaged premises will be sold at public auction for the benefit of the mortgagee. The mortgagee, either in person or by representation, must, without fail, be present at the sale of the mortgaged premises. If then no bids of amounts sufficient to pay the debt and the expenses shall be received, or if for any other reason the mortgagee shall be desirous of acquiring the property, it may be bid in and purchased by the mortgagee in the same manner as it may be by any other bidder. If the mortgaged premises shall sell at

a price which is insufficient for the payment of the charges against it, a judgment for the deficiency will be rendered by the court against the obligors on the bond. The effect of a foreclosure sale is to transfer (by the deed of the officer making the sale) the mortgaged premises to the purchaser free and clear of the mortgage which has been foreclosed and of all other mortgages and liens which are subsequent to the one which has been foreclosed.

EXTENSION OF MORTGAGES.—The fact that a bond and mortgage shall be due (that is, that the time which has been specified for the payment of the debt shall have arrived) is not at all a necessary reason for demanding the payment of the mortgage, and thus terminating the investment; although it will give to the mortgagee the right to demand payment without regard to the wishes of the debtor, and similarly to the mortgagor the right to pay the debt and cancel the bond and mortgage. No rights of either party will in any way be prejudiced by allowing such a mortgage to remain indefinitely, without further agreement between the parties. And so it is that in many cases mortgages have continued for long periods after they have become due, the interest being, of course, regularly paid, and the other agreements being regularly fulfilled as if the mortgage were not due. The chief objection to such a proceeding

is that the mortgagor may at any time, and, without satisfactory notice, pay the debt, and thus put the mortgagee to the inconvenience which often follows an unexpected payment; and likewise the mortgagee may, upon a day's notice, demand payment of the debt, and in default thereof begin foreclosure proceedings without delay. In order to avoid the possibility of such difficulties, it is a common practice to extend the times for the payment of mortgages for definite and specified numbers of years by agreements between the mortgagors and the mortgagees.

An extension of a mortgage should be in writing, signed and sealed by the parties in the presence of witnesses. It may be written on the back of the bond, and should state that the time for the payment of the amount of the bond is, by consent of the parties, extended to a certain specified time, and that all other conditions and covenants which are contained in the bond and in the mortgage of even date are to remain in full force.

RECEIPTS.—An orderly and systematic method of dealing with mortgagors, and of filing and preserving the various papers which appertain to investments in mortgages, will be found to be of great value, not only for the preventing of oversights which may result in serious inconvenience, if not in actual losses, but also for the purpose of facilitating the work which unavoidably

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attaches to such transactions. There is also a proper method of writing receipts and indorsements upon bonds, and this mortgagors are entitled to at the hands of mortgagees, although, generally speaking, they may not be in positions to demand it. If the mortgagor and the obligor in a bond shall be one and the same person, as is more often than otherwise the case, the receipts for interest should be written in the following manner:

BOSTON, MASS., Nov. 1, 1896.

Received of Mr. Richard Roe his check for two hundred and fifty dollars, for six months' interest on his bond bearing date May 1, 1885, to date (or to Nov. 1, 1896), the same to be indorsed on said bond.

\$250.⁰⁰/₁₀₀

MARY J. DOE.

If, by a sale of the mortgaged premises to Sarah Clark, Richard Roe, the mortgagor and obligor on the bond, shall have ceased to be the owner of the mortgaged premises, the receipts for interest, which is paid by Sarah Clark, may read in the following manner:

BOSTON, MASS., Nov. 1, 1897.

Received of Mrs. Sarah Clark her check for two hundred and fifty dollars, for six months'

interest on the bond of Richard Roe bearing date May 1, 1885, to date (or to Nov. 1, 1897), same to be indorsed on said bond.

\$250.⁰⁰/₁₀₀

MARY J. DOE.

The bonds which accompany mortgages are sometimes printed with lines and spaces on the backs for the indorsements of the payments of interest. Perhaps more frequently the backs of bonds are without indorsement spaces. In either case, all payments of interest should be indorsed on the backs of the bonds as soon as the payments have been received. The indorsements should economize, as much as possible, the blank spaces within which they are to be written, and may read in this manner:

Recd. Nov. 1, 1896, two hundred and fifty dollars, six mos. int. on within bond to date (or to Nov. 1, 1896).

MARY J. DOE.

In some cases bonds and mortgages are drawn with agreements to the effect that the principal sums may be paid by instalments, or part payments, at different specified times. Agreements of this kind are not generally advantageous to mortgagees, for the reasons that small sums, paid at periods which are separated by considerable intervals, will be difficult to invest properly and

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such payments will increase considerably the labor of keeping accounts and of calculating and remembering the different amounts of interest. But bonds and mortgages of this kind will present no material difficulties other than those which have been mentioned; they, therefore, may be used in cases where corresponding advantages, in the way of additional interest or improved securities, may be obtained, and in cases where investors shall desire to favor mortgagors with easier methods of paying the amounts of their indebtednesses. When, under such agreements, amounts of the principal sums shall be received from mortgagors, the following forms of receipts and indorsements on the bonds may be employed:

BOSTON, MASS., Nov. 1, 1896.

Received of Mr. Richard Roe his check for one thousand dollars, first payment (or second or third payment) on the principal of his bond (or the bond of William Clark), bearing date May 1, 1885, the same to be indorsed on said bond.

\$1000.⁰⁰/₁₀₀

MARY J. DOE.

Recd. Jan. 1, 1896, one thousand dollars, first payment on principal of within bond.

MARY J. DOE.

CHATTEL MORTGAGES.—The statements and considerations which are thus far contained in the

present chapter have been confined to mortgages upon real estate securities, for the reason that such mortgages are of far greater importance and advantage than those of any other descriptions. But it must not be supposed that real estate is the only kind of property which may lawfully be made the subject of a mortgage transaction. Almost all kinds of real and personal property may be lawfully mortgaged, the dividing line of distinction being between all kinds of property which are capable of absolute sale, which may be mortgaged, and mere possibilities of ownership or expectancies, which may not be mortgaged. Hence, not only the various interests in real estate other than absolute ownerships (such as an ownership for life, a leasehold, a judgment lien, or a mortgage itself) may be mortgaged, but also furniture, jewelry, clothing, horses, carriages,—in short, all kinds of personal belongings and chattels may be made the securities for mortgages.

Mortgages on goods and chattels, or *chattel mortgages*, may be classed as among the most common methods of securing, or of attempting to secure, loans, more often than otherwise of small amounts. Special laws have been enacted, providing methods of recording or filing chattel mortgages, and purporting to provide against fraud by requiring that copies of the mortgages, certified by the mortgagees, shall be filed, at certain specified periods, and also by making

removals of the mortgaged chattels, without the consents of the mortgagees, punishable offences.

Chattel mortgages usually are not accompanied by bonds, notes, or other evidences of the debts, statements of the debts and agreements to pay the same, or any deficiencies which may remain after sales of the mortgaged chattels, being included in the mortgages.

With regard to the value of all kinds of personal property as securities for loans, and as compared with real estate securities, two principal and very important differences will appear: first, real estate is actually permanent, and cannot be easily lost, stolen, hidden, or destroyed, while personal property, from its very nature may be moved from place to place, concealed, hidden, or destroyed at the will of the persons having the possession; and, secondly, the title to real estate is, generally speaking, a matter of public record, and the proof of title is usually a matter of documentary evidence, while the ownership of personal property is often extremely uncertain, and the proof of ownership may be a proceeding of great difficulty.

These objections to personal property as safe securities for mortgage-investments are of vital consequence, since they may render the titles to the securities uncertain, and may place the securities themselves beyond the control of investors. For these reasons alone, mortgages upon

chattel securities will come far short of the requirements which we have found to be necessary for the safety of investments, and accordingly they must be placed among the dangerous investments which are to be at all times avoided.

In concluding the discussion of the subject of mortgages, it must be remarked that, search and investigate as diligently as we may, no form of loan-investment which, in points of safety, simplicity, certainty of income, and freedom from the demands of an arduous and irksome vigilance, will be found to be equal to loans which are secured by satisfactory bonds and mortgages upon real estate will be found. And further, it may be said that investors who, stemming the current of modern popular tendency towards supposed newly discovered methods shall confine their loan-investments steadily to mortgages upon real estate, will not fail to reap the substantial benefits which are to be obtained only by a manner of proceeding which shall be at once uniform, systematic, judicious, and cautious.

CHAPTER VIII

REAL PROPERTY

BY the term *real property*, or, in the common, although technically improper, language of the masses, *real estate*, we mean land and that which is attached to it—in short, and with sufficient accuracy for the purposes of this work, *land and buildings*.

ESTATES IN LAND.—There are many different kinds of interests in lands, some simple, others intricate and difficult to understand. It appears to be entirely unnecessary that all such interests shall be explained in a work of this description; but it will be beneficial to define simply and briefly, the common kinds of ownership, or partial ownership, of land with which the business woman ought to be familiar.

The word “estate,” as applied to land, properly means *interest* or *kind of ownership*. We therefore speak of a tenant’s interest in the leased land as a *leasehold estate*, and of an ownership of land for life as a *life estate*.

The greatest estate which may be had in land is

an absolute ownership, or such an ownership that the land may be sold or devised by will, or will pass to the heirs by inheritance. Such an estate, in England, where there are other estates to distinguish, is called an estate *in fee simple*, or *in fee simple absolute*, and in the United States generally an estate *in fee*, or an *absolute* estate.

The second greatest estate in land is an *estate for life*; that is, an ownership of land which a person may have during his or her lifetime, the land, after the death of the owner for life (or *tenant for life*), to pass to other persons. The estate of the last mentioned persons is called an estate *in remainder*, because it is the part which remains of the absolute estate, after taking out the estate for life. The common forms of estates for life are the estate *in dower*, which is the life estate which a widow has in one third of the real property owned by her husband at the time of his death; the estate *by curtesy*, which is the life estate which a husband has in all the real property owned by his wife at the time of her death, provided the wife shall not have devised the land by will, and provided a child shall have been born alive to the husband and wife; and an estate for life, which comes to a person, not by act of the law (as dower or curtesy), but by deed or by will.

Estates for years are all estates in land which expire or terminate at fixed periods, as the estate of the tenant to whom land shall be leased for a

certain definite period. The estate of the landlord in the leased land, and which will *revert* to him after the termination of the lease, is called an estate *in reversion*.

The rule of *merger*, with regard to mortgages, has been referred to in the preceding chapter. It may be remarked here that whenever two estates in the same land shall come to the same person, without any intervening estate, the smaller estate will be swallowed up by, or *merged* into, the greater estate. Thus, if a tenant for life shall purchase the estate in fee, the estate for life will be merged in the greater estate in fee, for a man cannot be his own tenant. So, if a tenant for years shall acquire an estate for life in the same land, the estate for years will merge and disappear; for, in law, the estate for life is the greater estate, although the smaller estate may be for a thousand years. But if a tenant for years shall purchase the estate in fee, and a life estate belonging to a third party shall exist upon the land, the merging of the estate for years in the estate in fee (or, in this case, the estate in remainder) will be prevented by the intervening estate for life, and the owner of the estate in fee will have to pay rent to the life tenant.

With regard to the number of owners or tenants of land who shall have the same estate in the same land, estates may be *in severalty*, where one person holds the estate in his or her own separate

right; *in common*, where there are several owners, each of which shall have a separate but undivided interest, which, if the estate be in fee, may be devised by will, or may pass by inheritance to the heirs; or *in joint-tenancy*, where there are several owners having such interests in the land that, upon the death of one the interest of the deceased will pass to the remaining owners, all the interests finally passing to the last survivor. Of the last two kinds, estates in common are generally presumed to exist wherever there are several owners of the same land, unless an estate in joint-tenancy shall have been expressly provided for in the deed or will which creates the estate. Estates in joint-tenancy are comparatively rare in the United States, and are not all favored by the laws of the several States.

The *title* (or the means by which a person has rightful possession) to real property may be acquired in several ways: by occupation, as where one shall take and claim the possession of wild land, the property of nobody; by adverse possession where one shall hold possession of another's land in spite of the true owner for a certain number of years, which has been prescribed by law as sufficient to give a good title to the squatter; by devise, where real property shall be given to a person by will; by descent, where real property shall descend to the heirs-at-law; and by the common method of conveyance.

DEEDS.—Properly speaking, a *deed* is any contract which shall be sealed and delivered by the parties. Hence, bonds, mortgages, leases, releases, and conveyances are all deeds; but, by common usage in the United States, the word has come commonly to signify only the conveyance or instrument by which real property is conveyed.

The legal requisites for the validity of deeds are: competent parties or parties who by law are considered competent, to make contracts—of proper age and sufficient understanding; proper subject-matters; legally sufficient considerations; writings upon paper or parchment; proper legal forms; proper knowledge of the contents by the parties; signing and sealing by the proper parties; proper attestations, and delivery.

The proper and orderly parts which form a deed are: the *premises*, which states the names and other designations of the parties and describes the property which is affected; the *habendum* which describes the estate which is conveyed by the deed —“To have and to hold the said premises unto the said party of the second part, and his heirs and assigns forever,” or “To have and to hold etc., for and during his natural life,” or “for and during the term of ten years”; the *reddendum*, in which any reservations to the grantor (such as rent) are stated; *conditions*, or the clauses which may provide for the defeating, upon certain contingencies, of the estate granted, such as the condition of payment in

a mortgage; the *covenants*, or special agreements between the parties; and the *conclusion*.

It will be evident that all deeds will not necessarily contain all of the parts which have been mentioned, since some of them will apply only under special circumstances. For example, the ordinary deed of conveyance has neither *reddendum* nor *conditions*, because, ordinarily, nothing is reserved to the grantor, and the premises are sold to the grantee absolutely, without conditions; in a lease, the rent which is reserved to the lessor being of principal importance, the *reddendum* will, of course, be included.

In a general manner, it may be said that deeds of conveyance are of three kinds: the *bargain and sale* deed, which simply sells the land to the purchaser without covenants; the *quit-claim* deed, which only gives to the grantee any claims to title which the grantor may have had in the land; and the *full-covenant warranty* deed, which contains all the ordinary covenants for the protection of the title of the purchaser.

Full-covenant warranty deeds should be in all cases demanded, except when special circumstances, which should seldom arise, shall make other arrangements necessary. They are the only safe and reliable conveyances which will bind the grantors to make good the titles; and a refusal on the part of a grantor, in a particular case to give such a deed should generally, unless

satisfactorily explained, cast some suspicion upon his title.

There is some variation in the forms of full-covenant deeds which are common in the different States; but the covenants which are most commonly contained in such deeds are the *covenant of seizin* (rightful possession), and right to convey, by which a grantor promises that at the time of the conveyance he is possessed of a good and indefeasible estate in fee-simple in the premises, and that he has full power and lawful authority to sell the premises; the *covenant against incumbrances*, which is to the effect that the premises granted are free and clear of all former grants and incumbrances; and the *covenant of warranty*, which is a promise, on the part of the grantor, that he and his heirs will forever warrant and defend the title to the premises.

In addition to these covenants, there are two which are generally included in deeds of conveyance in the Eastern and Middle States, and which ought to form parts of all properly drawn full-covenant deeds. They are the *covenant of quiet enjoyment*, by which the grantor promises that the grantee and his heirs may, at all times, peaceably and quietly use and enjoy the premises granted without the molestation of any person lawfully claiming the same; and the *covenant of further assurance*, to the effect that the grantor, his heirs, and all other persons deriving any

interests in the premises through them, will furnish any other and further conveyances or assurances of title which the grantee or his heirs or assigns may reasonably require.

It appears not to be generally desirable that business women shall undertake considerable comprehensions of purely legal matters, lest they may become involved in the mysteries which lead to pettifoggery or to litigiousness. But an understanding, sufficient to admit of at least a casual application of the simple principles which have been explained in this chapter, will not fail to be of real advantage. It will not be necessary for business women to be familiar with the subtle, legal reasons which underlie the apparently verbose covenants contained in deeds; but it will often be of great benefit to them if, when reading deeds which are about to be delivered to them, they shall be able to assure themselves that the covenants, which are necessary for their protection have not been altogether omitted.

OWNERSHIP OF LAND.—Land, being the original fountain-head of all production, must necessarily be the original source of all income, and as such a source of income, or, in other words, as the security for certain forms of investment, it may well be expected to fulfil to an exceptional degree all the requirements of the rules of investment.

Without giving here the details of such a proceeding, because of its simplicity and the ample illustration of it which has been given in the preceding pages of this work, it may be remarked that an examination of the general rules of investment, as applied to the ownership of real property, will at once result in a full realization of such natural expectations.

No other method of investment has ever been able so completely to respond to the most exacting requirements in this respect as does real property which is owned and controlled by the single investor.

A minute comparison between real property, which is owned by investor, and mortgages upon real property which are considered by many persons to be superior to all other forms of investment, will result rather in favor of, than to the disparagement of, the former. For the ownership of real estate will do away with the possibilities of failures of foreclosure proceedings, which, however remote and improbable, are at least possible sources of danger to the safest mortgages. So, also, the fact that the older the investor's title to real property shall become, the firmer and better it will become (all flaws and imperfections being capable of obliteration by the mere lapse of time), well accords with the permanent and substantial character of the security. The theory that it will be a simpler matter to turn mortgages quickly into

money than real property which is owned outright will have but little weight with the true investor; for if an investment shall be in all respects a satisfactory one, there will be, generally speaking, no desire, on the part of the investor, for such a transformation. And further it may be assumed, with every appearance of reason, that, if a mortgage upon real property shall have at all times a market value, quickly to be realized, similar qualities must attach to the land itself, which is the source and reason of the value of the mortgage. Indeed, the facts that investments in mortgages may be of much shorter durations than mortgagees shall desire, and that such investments may be terminated with scant notices to the mortgagees, will constitute arguments which will appeal with considerable force to investors, and which will again result to the advantage of direct ownership of real property. The remaining argument—that personal property, even if the particular kind shall be by law taxable, may, by the oversight of or the deceiving of the tax officials, escape taxation, while real property will not be capable of concealment from the eyes of the assessors—should not be considered as worthy of notice, since it belongs only to investors whose intentions are fraudulent and dishonest.

The direct ownership of real property may, therefore, be considered to be the most advantageous general form of investment.

But it must be remarked that what is undoubtedly true in general may be precisely the contrary in special cases; that is, there are special conditions which must be fulfilled before special investments in real property may be brought to the maximum standard of the general rule.

There are many kinds of real property, varying greatly in all essential respects,—from the valuable business lot, upon which may stand a twenty-story building of the most expensive character, to the practically worthless swamp-lands and barren, inaccessible mountain-lands which exist in almost all countries. Since the possession of the former kind will be practically impossible to the majority of investors, and since the possession of the latter kinds will be undesirable to all investors it is evident that somewhere between these limits must lie the various kinds of real property to which the attention of investors in general must be chiefly directed.

There are two general purposes for which mankind seeks to own and control real property: first, that the real property may furnish homes within which to dwell, and second that the real property may furnish incomes with which to meet the expenses of living. In a broader sense, the former purpose may be considered to be included in the latter, since every ambitious person must either own a home or hire one, and the ownership of a home must be presumed to add to the income

by the saving of rent and other expenses which are incident to the life of a lessee.

OWNERSHIP OF HOMES.—With regard to the former of these purposes, the first question must be, whether or not it will be of advantage to investors generally to own their own homes, and if so, homes of what kinds and descriptions. Whether it will be more profitable pecuniarily, and more beneficial in other important respects, to be the absolute owners of homes, or to hire homes of other owners; and, if the former plan shall be decided upon, whether homes shall be located in large cities, in small cities, in suburban villages, or in purely rural districts; and whether homes shall be luxurious and costly, fashionable, moderate, or plain and simple—these questions, and others of like natures, have at times engrossed the attentions of nearly every prosperous citizen, often to be decided in such a manner as to cause serious future regrets and inconvenience.

From the point of view of actual pecuniary benefit, the general rule appears to be that the ownership of a home possesses advantages over all other methods of providing this necessity; for it is to be presumed that no landlord will rent a house at a rental which shall be insufficient to pay all necessary expenses—interest on the money invested, taxes, repairs, insurance, and sinking fund—and, if possible, an additional profit,

unless the particular premises shall happen to be so undesirable that the landlord will be forced to accept a low rental, while he endeavors diligently to "unload" his bad bargain upon some unsuspecting or inexperienced person. The direct and indirect expenses which are necessitated by frequent changes of residence, the possibilities that rentals may be increased at times which may be most inconvenient for tenants, the probabilities of unpleasant and time-consuming discussions with landlords or their agents concerning repairs and improvements, and the necessity of regularly providing the monthly or quarterly rents, without regard to the inconveniences which it may cause, are considerations upon which tenants must, indeed, look with apprehension and alarm; while the tranquil home owner may generally, if necessary, postpone all house expenses, save the comparatively small one of taxes, until more convenient times.

A common objection which has been offered to the owning of homes, is the fact that it will tend to confine the owners to residence in the localities where the homes shall be situated. In certain cases this objection may be real and tenable, while in others it will prove to be entirely unimportant. A military man or a sailor may, perhaps, wisely choose not to own a home, because his occupation may require that he, and preferably his family, shall reside at different times in different places. The difficulty of disposing of a home

upon advantageous terms, or the alternative of frequent separations from family, may cause such a man to prefer the hired home; although often, in point of fact, he will insist upon his own home, notwithstanding these objections. Similarly, it has been asserted that a mechanic, who shall be dependent upon his trade for a living, should not own a home, for the reason that he ought to be at all times free to move from one locality to another, as may be most advantageous for him, on account of his trade. If an artisan's home shall be wisely chosen with respect to location, as well as in other important respects, it will be difficult to discover good reasons why he should have extraordinary trouble in selling or renting it, if it shall become necessary or desirable for him to change the location of his residence; and it is apparently certain that for such a person the ownership of a home which has been badly selected—for example, in a small village which is entirely supported by a single industry—may result in a serious loss. Thus, it appears that the advisability of owning homes, even in the exceptional cases which have been cited for the purposes of arguments which are unfavorable to such ownership, will depend, not upon the correctness of the general principle, but upon the wisdom and the discretion with which the selection of homes has been attended.

For such persons as may be able to live upon their incomes from investments, and for such as

may, for other reasons, be in positions to choose their places of residence, the advantages of owning homes must be generally admitted; and the question next arising will be concerning the considerations which ought to be made use of when selecting homes.

To persons who may be possessed of large incomes and of ample fortunes, the question of the selection of homes will become principally one of personal preference. Such persons may reside, during the winter months, in costly city houses, and during the summer months in scarcely less elegant country homes, among the mountains, by the seashore, or elsewhere, according to their individual tastes. But to persons of more moderate means, the selection of homes should be accompanied by careful considerations of all conditions which may affect the homes, not only as desirable places of residence, but, to a certain limited extent, as investments in real estate.

For the purposes of general comparisons, homes may be divided, with reference to location, into three classes: first, city homes, by which we mean homes which are situated in large cities, and which have all the regular characteristics pertaining to such homes; second, semi-rural homes, or homes which are located in large villages or small cities; and, third, rural homes, that is, homes which are situated in small villages or at considerable distances from cities and villages.

With regard to the cost of homes, each of the three classes which have been mentioned may be divided into three classes, namely: costly homes, moderate homes, and simple homes, by which terms we mean homes which shall be costly, moderate, or simple as compared with the average cost of homes in the same classes with reference to location.

In the selection of homes, the necessary considerations may be very differently viewed by different persons; a consideration which to one person under certain circumstances will be of the greatest importance, to another person, under different circumstances, may be of very little consequence. Thus, one person may establish a home upon a purely pecuniary basis—as an investment or speculation, to be maintained, sold, exchanged, or leased, according as will be most advantageous from a pecuniary standpoint; another person may desire chiefly the advantages of society and amusement, and the home will be chosen with these objects as the principal considerations; another may regard the question of general healthfulness as the all-important consideration; and still another may locate a home because of beauty of scenery and agreeableness of climate.

In so far as homes are to be considered as investments in real estate, the rules and suggestions which are to be found in this chapter, and in the

preceding chapters of this work, will be in all respects applicable. But, because of the peculiar relation which the home must bear to the investor, other considerations, some of which must be permitted, at least in particular cases and to a limited extent, to outweigh the regular rules of investment, are: general comfort and convenience; preference and taste; morality of particular vicinities; climate; healthfulness; proper society both for young and old; accessibility of churches, schools, physicians, places of amusement, stores, and market-places.

Probably the better opinion is that homes should be selected without other strictly pecuniary considerations than that the costs shall be safely within the means of the owners and that the owners shall receive fair values for the expenditures. If, however, it shall be decided that homes must be capable, at all times, of being disposed of with little or no losses, the order of desirability of classes may be stated as follows:

- (1) Simple city homes,
- (2) Moderate city homes,
- (3) Costly city homes,
- (4) Simple semi-rural homes,
- (5) Moderate semi-rural homes,
- (6) Simple rural homes,
- (7) Moderate rural homes,
- (8) Costly semi-rural homes,
- (9) Costly rural homes.

City homes will generally possess the advantages of modern conveniences—society, churches, schools, amusements, etc.—over semi-rural homes, and to a far greater extent over rural homes; while country homes will have the advantages of pure air, general healthfulness, freedom from noise and disturbance, and the tranquil pleasures of summer life among the trees, fields, and flowers, no less than to many persons, the brisk and invigorating delights of snow-covered hills and frozen streams.

After a careful study of circumstances, in each particular case, it seems that the home which will combine the greatest number of advantages with the least number of disadvantages will prove to be one ranking among the best of moderate houses, having a reasonable amount of grounds and garden, and situated in or near a village or small city, of from four thousand to ten thousand population, and being from twenty to fifty miles from one of the principal cities of the country.

With regard to the actual safe cost of homes for incomes of given amounts, or the proportions of principals which may be safely invested in homes, the general rule may be to devote one tenth of working or income-producing principals to the establishment of homes. Otherwise expressed, the cost of the home may be equal to the sum of two years' regular income. A person having a principal of fifty thousand dollars, and an income of twenty-five hundred dollars per year, may

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therefore expend the sum of five thousand dollars upon a home; a person having a principal of two hundred thousand dollars, and a yearly income of ten thousand dollars, may enjoy the blessings of a home which shall cost twenty thousand dollars; and a millionaire, having an income of fifty thousand dollars per year may own a home which shall cost one hundred thousand dollars.

In the majority of cases it is believed that this rule will be found to give satisfactory results. But there are, manifestly, special cases in which it will not apply at all. For example, persons having very small principals, and dependent upon their labors for livings, will, by the rule, be restricted to entirely inadequate, or even impossible homes, while persons who may be worth many millions will be entitled to homes of unreasonable extravagance. A person having a principal of two thousand dollars, and attempting to establish a home for the small sum of two hundred dollars, will certainly become involved in an absurd task; and a person who shall possess a fortune of a hundred millions, and who shall expend the sum of ten millions of dollars upon a home, may be considered to have acted almost the part of a madman. In the one case, the entire principal, under proper conditions, may be expended in providing a home; and in the other case a small proportion of the amount which will be allowed by the rule will be sufficient to provide every proper luxury for the

home of a person who may be possessed even of so great a fortune.

Homes should be, in all possible cases, free and clear. Whatever may be the complicated nature of outside investments and speculations, no matter what risks and chances we may be willing to assume in ordinary transactions, let us take no risks with our homes. Let us mortgage and incumber, if there shall be no help for it, every other kind of property; but let no mortgage hang, like a gloomy cloud, above that gentle refuge from all risks and chances—the one spot safe and secure—the home.

HOMESTEAD ACTS.—The necessity for assuring, in a certain degree, the permanence of homes, has caused the various States of our country to enact laws the general effect of which is to exempt homes from sale under executions for the collection of debts. These laws, known as the *homestead acts* differ somewhat in the different States; but the general effect is to declare that homesteads, occupied by the owners and their families, and limited to values varying from a few hundred dollars to several thousand dollars, or limited by the allowed area of the lands, shall be exempt from judicial sale for the collection of debts during the lifetime (or widowhood) of the widow and during the minority of the children. The theory of the legally-exempt homestead is

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that it shall be a sure home during the life of the family—a home belonging to the husband, the wife, and all the children. Therefore, in many of the States, homesteads cannot be sold or mortgaged except by the consent of the whole family, the husbands and the wives (as the representatives of the children) being required to join in the execution of the deeds.

In some States, the right of exemption under the homestead acts may be claimed by the proper parties, as a matter of course, without any special precedent act; while in other States it is necessary either that the deed which conveys the home shall declare that the premises are to be used as a homestead under the statutes of exemption, or that the owner shall record in the proper public office a declaration to the same effect.

The small values to which exempt households are generally limited (probably one thousand dollars is more general than any other amount) have resulted in the gradual decrease in the number of such homesteads in the well-settled States, as the general values of real property have increased. In most of the large cities exempt homesteads are practically unknown at the present time.

BUILDING LOAN ASSOCIATIONS.—Within recent years, there have become common in many of the States certain corporations, called variously

Building Loan Associations, Mutual Loan Associations, Co-operative Loan Associations, etc., whose avowed purpose is the encouraging of savings and the building of homes. More or less complicated methods of subscribing for, paying for, and pledging shares, and of bidding for loans to be secured by bonds and mortgages, or by pledged shares, or both, are provided for by the statutes of the different States, and by the regulations and by-laws of the corporations. Briefly described, and without unnecessary attention to details, the theory of these corporations appears to be that they are at once a means of safe and advantageous investment for their members, and a means of easy and advantageous borrowing also by the members—that one member may safely invest money, at satisfactory rates of interest, in the shares of such a corporation, while another member may easily borrow, at satisfactory rates, of the funds which the first member has invested. Evidently such a claim must be absurd; for if the investor shall loan money at high rates of interest, the borrower must pay the high rates, and, inversely, if the borrower shall pay low rates of interest for a loan of money the investor will receive only low rates.

Associations of this kind are sometimes exempted by the statutes from the effects of the usury laws; this fact, together with other results of general investigations, must lead to the

conclusion that the borrowing members must pay rates of interest which are higher than the usual rates, and also that other charges may cause the actual rates which must be paid to exceed the legal rates.

Corporations of this kind have been of considerable apparent benefit in the building up of cities and villages. They have also probably been the means of increasing the number of homes which are owned, at least nominally, by those who occupy them. They undoubtedly afford quick facilities for borrowing money, and by their circulars and notices may often suggest the owning of homes to those who would otherwise never own their homes. For these reasons, corporations and associations of this kind, honestly managed, are fairly entitled to the credit of being generally beneficial; and it is far from the purpose or wish of the author in any way to disparage them. But the fact of the matter must be that homes which shall be established by means of these associations will be among the most costly for the values which will be received.

For persons of some means there will be no necessity of recourse to borrowed funds for the building of homes. But for those who may have little or no means, the question whether it will be more advantageous to build homes before they can be paid for, and to pay taxes, and principals and interest of mortgages until the homes

may be made free and clear, or to pay rent for homes until such times as permanent homes may be acquired and paid for, will be of no little importance.

The theoretically and sentimentally correct process of establishing an independent home out of the simple elements of good health, industry, economy, and steady savings may be described as follows:

Starting out in the family life, with none of the elements of success except those which have been mentioned, the family must labor and economize rigidly in every possible direction, without false pride or unreasonable haste, living in poor houses for the sake of low rents, eating cheap food, wearing cheap clothing, and investing all savings with strict caution and promptness until such time as a small, cheap house, but such as is capable of future enlargement and improvement, may be secured and entirely paid for. The process must then continue as before, under somewhat easier and better conditions.

At future times, as the results of the self-denial and prosperity of the family shall become greater, such a home will be beautified and improved, until it becomes, in all respects, sufficient—a comfortable, beautiful, independent home, every part of which will be hallowed to the family by which it has been so faithfully earned. Such is the perfect process of home-making. It

follows perfectly from all the correct principles of family economics and of investment. It will lead no person beyond his means; it will take no risks of loss; it will require no struggle to meet improper expenses; and it will lead always steadily and surely up to the desired end.

Unfortunately, perhaps, such an old-fashioned course as has been described ill suits the modern spirit of haste and unrest. Nevertheless, it will prove to be well worth the while, if those who shall contemplate the owning of homes by means of imagined quick methods, shall put to themselves, with deep earnestness, one pertinent question—do these corporations for the building of homes commonly own houses which have been obtained through foreclosures? Every house thus owned must represent one failure of the modern method—one family whose dearest hopes have been blasted—one ruined home.

PURCHASING REAL PROPERTY.—We come now to the consideration of real property as the security for direct investments, or for the purposes only of securing principals and of furnishing incomes.

At the outset, it must be remarked that the judicious purchasing of real estate will not always be a simple matter. It will always require careful study, caution, and independent judgment, if not experience. Therefore, if one shall be fortunate enough already to possess real estate which shall

return a fair and regular income, which shall show no tendency to decrease in value, but, on the contrary, shall steadily increase in value, if ever so slowly, year by year (or shall decrease in value only because of the poor character of buildings which may be advantageously replaced by new and better ones) all temptations to dispose of the real estate for the purpose of making better investments should be steadfastly resisted, and the substantial investment should be in no wise interfered with.

In real estate matters, to a very marked degree, will the time-honored recommendation to leave well enough alone prove to be applicable; especially will this be true under the somewhat difficult conditions of investment which prevail generally at the present time.

The difficulties which will be met with in the purchasing of real estate must not be underestimated, nor should they be considered so great as to place this safest of all kinds of investment beyond the attainment of properly instructed business women. For the difficulties may be overcome without unreasonable task, and, when once mastered, the art of investing in real estate will furnish ample rewards for the time and patience which may have been consumed in the learning of it.

An examination of the conditions and circumstances of the land itself which are necessary for

satisfactory investments in mortgages has been given in the preceding chapter, for the reason that mortgages must always anticipate the possibility of owning the mortgaged premises. The considerations which have been there mentioned must be thoroughly satisfied in investments in which real estate shall be purchased by the investors. If any distinction in this respect is to be made between the two forms of investments, investors should make use of even greater care when purchasing real estate than when loaning money upon mortgages; for in the former case, the chances of receiving back again the amounts which have been invested, without the necessity of owning the securities, will be, of course, entirely out of the question.

For the sake of avoiding unnecessary repetition, it will be sufficient to remark that, in all kinds of real estate transactions, the preceding chapter, the chapter upon the general principles of investment, and the present chapter must be read in connection the one with the others, regarding either as supplementary to the others.

The present chapter, in the main, must be devoted to the examination of facts and conditions which apply so exclusively to the ownership of real estate as not to have been suggested in the preceding pages.

CONDEMNATION OF LAND.—In the words of

the New York statute: "The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands, the title to which shall fail from a defect of heirs, shall revert or escheat to the people"; and the same rule, in effect, exists in the different States of the Union.

The practical effect of these laws is that every owner of lands holds title to the lands, subject to the right of the State within which the lands shall be situated, to pass laws which shall govern the uses of the lands; to tax the lands; and to take possession of the lands, upon payment of legally-determined compensations, and otherwise complying with the laws, for certain particular uses (such as roads, public parks, public buildings, etc.) which are considered to be necessary for the welfare of the general public.

The last-mentioned right of the State in private lands is called the right of eminent domain. States have the power, under the laws, to delegate the right of eminent domain to certain other parties, such as municipal corporations (cities, counties, villages, etc.), railroad corporations, etc., in order to enable them to obtain, at fair and reasonable prices, lands which otherwise they might not be able to obtain at all, or at least only by the payment of exorbitant prices, and which are necessary to them for purposes

which are presumed to be for the benefit of the public.

The legal process of taking private lands for public uses, under the laws of eminent domain, which process is called the *condemnation* of land, may be generally described as follows: The necessity for the condemnation having been determined, the condemning corporation notifies the land-owners of the proceeding (by advertisements in the newspapers, by forwarding the notices through the mails, or by personal service upon the owners—usually the former), and by application to the courts obtains the appointment of commissioners for the purpose of fixing the prices which must be paid for the lands which are to be taken. If the proceeding shall not be contested by the owners, the amounts which shall be fixed upon and awarded by the commissioners will be paid to the owners or deposited in the banks or trust companies designated by law for such purposes, and, upon the order of the court, the title to the lands will pass to the condemning corporation. If the owners shall wish to contest the proceedings, the laws of the various States provide methods of trial, by means of which the fair values of the lands which are sought to be condemned may be determined by courts and juries; methods of appeal from erroneous determinations of courts or juries are also provided.

With regard to the right of eminent domain,

the Constitution of the United States provides simply that private property shall not be taken for public uses without just compensation, leaving the necessary legislation in other respects to the various States.

ADVERSE POSSESSION.—Adverse possession is the right which a stranger has to acquire the title to real estate belonging to another by simply occupying and claiming it without right, for a certain period of years, which is declared by the laws of the State within which the real estate shall be situated to be sufficient for the purpose. The true construction of the law, with regard to the acquiring of titles by adverse possession, should be that the use and occupation which are required to divest the true titles must be actual, continuous, open, adverse, and notorious to such an extent as to raise the presumptions that the squatters shall intend to claim the lands, in spite of the real owners, and that the real owners shall not intend to oppose them. But, as a matter of fact, the laws of some of the States appear actually to favor the land thieves. While the general rule of law is that an occupation of land for a period of twenty years will be necessary before squatters may obtain good titles, the laws of some of the States require much shorter periods of occupation. So the evidence of the necessary occupation may be made difficult or simple by

the laws; the manner of occupations which shall be required may favor squatters by allowing them to claim titles to large tracts of land while they actually occupy and use only small portions, or by construing the erection of shanties which may be only occasionally visited as sufficient occupations; and the laws may be such as to allow courts and juries generally to favor resident squatters, to the injury of rightful non-resident owners.

Owners of real estate which shall be liable to such acts of injustice will do well to dispose of their lands at the first propitious opportunities; and, while awaiting the opportunities, the lands may be frequently and thoroughly surveyed by the owners and witnesses, careful memoranda being made of the visits, in anticipation of any claims which may be made by squatters against the true titles to the lands.

PRESENT AND PROSPECTIVE MARGINS OF SAFETY.
—Recurring now to the general principles of investment, it will be remembered that the first consideration concerning an investment is, that it shall be as nearly as possible absolutely safe, for which consideration two requisites have been stated: namely, that there shall be a real and ample security, and that the security shall be within the control of the investor; the second and

remaining consideration being that the investment shall return a fair and regular income.

These invariable rules must now be applied to investments in the form of real estate which shall be owned by investors.

With reference to the first requisite of safety, it will be observed that a marked difference exists between investments which are in the nature of loans (of which the mortgage upon real estate is to be regarded as the highest type) and investments in which the securities shall be purchased by the investors (of which the ownership of real property is to be regarded as the highest type), in the matter of the margin of safety, the general principles of which have been fully explained in preceding chapters.

In the former, or loan-investments, the margin of safety is, in the main, although subject to some variation, a fixed and definite quantity, while in the latter, or purchase-investments, this margin may be great, small, altogether wanting, or, indeed, instead of a margin of safety, there may be a margin upon the wrong side. Thus, in the case of a mortgage upon real estate, the margin of safety is, it will be remembered, the difference between the actual value of the real estate and the amount of the mortgage (always, it must be presumed, in favor of the investor); in the purchase-investment in real estate the *present* margin of safety is the difference between the actual

value and the cost of real estate, which difference will exist to the advantage of the owner only in the case of what is commonly called a good bargain.

If real estate shall be purchased at less than its actual value, there will be a present margin of safety; if, as is more apt to be the case, the value of, and the price which shall be paid for, real estate shall be the same, there will be no present margin of safety; and if the cost of the real estate shall be greater than the actual value there will be a negative margin, or a margin upon the wrong side—a margin of danger, rather than a margin of safety.

Since we cannot always calculate upon the purchasing of good real estate at less than its real value, it is plain that, in the majority of cases, the required margin of safety must be provided in some other manner than the difficult seeking after exceptional bargains. Good bargains in real estate are, at certain times, to be obtained in manners which will shortly be explained; but such opportunities must be regarded as exceptional, and as requiring special conditions which are not often easily to be fulfilled.

Properly selected real estate will almost invariably increase in value year after year, until a final maximum limit shall be reached; and this limit, in the best kinds of real estate, will often be maintained indefinitely when once attained.

The increases in the values of real estate will be widely different in different cases; in some cases, the increase will be slow and regular, in others rapid and irregular. Nevertheless, real estate, if wisely selected, and purchased under proper conditions, will seldom fail, in the long run, to increase materially in actual value.

The increases in values, then, must be generally relied upon to furnish the necessary margin of safety; or, in other words, there must be either an actual present, or a sure future, or prospective margin of safety; and the perfect purchase-investment will be that in which both of these margins will eventually appear. The requisite which is now under consideration, as applied to real-estate investments, will therefore suggest the first general rule for the purchasing of real estate; to wit: the real estate must possess either a present or a prospective value which shall be greater than the actual cost.

In order to purchase real estate at less than its actual value, it will be necessary, first of all, that the property shall be paid for in cash. Real bargains in real estate, like other real bargains, are not to be obtained on credit; for the strongest incentive which may force one to sell his property at a low price will be the necessity for money for immediate use, and in general no amount of credit or security will serve as a substitute in such a case.

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The only safe general rule with regard to the exchanging or trading of real estate will be that exchanges shall be entirely avoided. If an investor shall have become possessed of a bad investment in real estate, as a general rule it will prove more advantageous in the end to dispose of the real estate at a low figure, than to endeavor, by a succession of exchanges, to get out of the difficulty without loss. Desirable real estate can almost always be sold for cash, and only bad bargains are offered for exchange.

Indeed, so large a proportion of exchanges result disastrously that there seems to be a certain warrant for the facetious theory that an exchange of property is the only practice in which there is a possibility that both parties to the transaction may be cheated. None but the most skilful and experienced dealers in real estate can afford to indulge in exchanges; the many suggestions of the real-estate brokers with regard to advantageous exchanges, may, therefore, be safely disregarded, upon the general ground that their opinions will be prejudiced in favor of exchanges by the double commissions which sometimes accompany such transactions.

In general, real estate should be purchased only in times of business depression; and preferably, it is evident, at a period in a time of depression when values of almost all kinds of property shall have reached their lowest points. Such a

proceeding will not always be easy of accomplishment, for the reason that the lowest values which will be reached are not always to be correctly determined in advance without the exercise of judgment and watchfulness, if not of special ability. But the following suggestions will serve to indicate the reasoning by which such determinations may be made: Long periods of profitless business always brings general depressions of values, for the sufficient reason that there are, at such times, many who need money, and therefore must sell their property, and, at the same time, few who have the available money to invest—in other words, the supply will exceed the demand, and a fall in prices must follow. In accordance with the adage to the effect that we must go against the current if we wish to catch the driftwood, a simple rule with regard to the handling of real estate will be to buy when others wish to sell, and to sell (if at all) when others wish to buy.

It has been said that periods of depression occur generally at intervals of about fifteen years' duration, and extend through periods of from three to five years; an investigation of the facts will show that this statement is not farther from the truth than statements of such a general nature usually are.

A serious difficulty in following out the rule to purchase real estate only in times of depression,

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will be the general inability to obtain cash money at such times. Mortgages which are due cannot be called in, even if such a course shall be desirable; for the general dearth of money will render it difficult, if not impossible, for mortgagors to obtain the money with which to pay off their mortgages. Real estate cannot be turned into cash; for to sell real estate at such times, in order to purchase other real estate, will evidently be absurd. The practical way out of this difficulty is to avoid it entirely by preparing for a period of depression before it shall arrive. While all kinds of business are in flourishing conditions, while prosperity and success are to be met with upon every side, while enterprises and industries are everywhere thriving, and no thought of adversity exists, the sagacious investor, whose independent judgment is uninfluenced by the rush and excitement of the masses, and who well knows that over-production, excessive speculation, high values, and "booms" are the sure forerunners of business crashes, and subsequent depressed values, will quietly lay aside the cash which will soon perform for him grand services, when the speculators and "boomers" shall be silent and crushed.

Real estate may be purchased more advantageously from owners who are anxious to sell than from those who will require urging; for the only effective urging in such cases will be the

offering of tempting prices, and investors must see to it that the prices which shall be offered by them shall be tempting because they are cash prices, not because they are exceptionally high. Therefore, no anxiety must be manifested on the part of proposed purchasers. After deciding upon the desirability of certain pieces of real estate, their values should be fixed upon; and prices somewhat lower than the investors shall be willing to pay, and determined upon without reference to the prices which may be asked for the premises, may be offered, with the understanding that the offers are for cash, to be paid in full at the passing of the titles.

As a general rule, vacant or unimproved real estate will be the first kind to feel the effects of hard times, because the expense of keeping such property, and the lack of income from it, will cause it soon to become burdensome. For similar reasons, heavily mortgaged real estate will be found early on the market in times of depression. Improved free and clear property, on the other hand, will often carry itself through long periods of depression with no greater inconvenience to the owners than considerable reductions in the rentals.

Auction sales may prove to be advantageous mediums for the purchasing of real estate, for they are sometimes the means of putting upon the market valuable properties which may be

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offered for sale only because there are special circumstances which practically compel a recourse to such quick and simple methods. When purchasing real estate at auction sales, however, the exact values of the properties, the actual reasons for, or causes of the sales, and the general and particular natures and conditions of the premises and their surroundings, should be thoroughly understood.

The amounts of rentals, taxes, insurance, and other expenses being once ascertained, the calculation by means of which the present quality of an investment in improved real estate is to be determined, will be a simple one; for the investor has only to obtain, from these data, the net returns from the property, over all expenses, in order to know exactly what the present percentage of income from the property will be. If the net returns shall amount to over six per cent. upon the amount which must be invested other conditions being in conformity with regular principles, the investment must be considered as highly satisfactory. In fact, if there has been no mistake or omission in the calculation, a net return which shall amount to considerably less than six per cent. upon the total cost of the real estate will prove, in the main, to be better than the average returns from equally safe investments.

The calculation upon which the success or failure of such a transaction will largely depend

should be, whenever such is possible, founded upon actual rather than upon estimated data. The actual average of rentals for a number of years ought to be known with reasonable certainty; the amount of taxes and water rates should be learned directly from the tax books; and the possible future assessments from the conditions of surrounding streets, and the cost of previous public improvements which are similar to those which are likely to be made. Similarly, all expenses, such as insurance, repairs, janitors' salaries, heat, light, etc., are to be determined from the most accurate statements which may be obtained, together with careful examinations of the premises, conversations with janitors and owners, and a general ability on the part of purchasers to estimate closely the costs and values of such items. Careful attention to these matters will be necessary, for the reason that little dependence may properly be placed upon the statements of owners who wish to sell, and of agents who are looking chiefly for the commissions which will result from the sales.

SINKING FUNDS.—In all cases of permanently improved real estate (and by this is meant real estate upon which are buildings which are intended to be permanent, not being erected for temporary purposes, or so old and in such poor conditions as to be necessarily short-lived) a sink-

ing fund must be included in the data by means of which the calculation of returns shall be made. The best of buildings will evidently not endure indefinitely, and the calculation in question must place investors in such positions that, when particular buildings shall have become worn out, and practically useless, the investments will have provided for the erection of new buildings, of at least equal costs with the old ones. The sinking fund must necessarily be a matter of estimation, since, evidently, it will be impossible to determine, accurately, during what periods of time certain buildings may be maintained in tenantable condition; it will also vary with the ages, kinds, and qualities of buildings, with the wear and tear upon buildings, and with the amounts which shall be devoted to the repairing of buildings, from year to year. If it shall be estimated that a certain building will endure for a period of one hundred years, the annual sinking fund will be the cost of the building divided by one hundred, or one per cent. of the cost; if seventy-five years shall be allowed for the life of a building, the annual allowance for the sinking fund will be one and one third per cent. of the cost; and if the life of a building shall be estimated at fifty years, the annual sinking fund will be one fiftieth, or two per cent. of the cost.

For first-class new buildings of brick and stone, with ordinary amounts of repairs, probably

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one per cent. per annum may be considered to be a fair allowance for the purposes of sinking funds; for new buildings of poorer or ordinary qualities constructed of brick and stone, the allowance should be about one and one half per cent. per annum; and for new frame buildings, which shall be kept at all times in good repair, probably two per cent. per annum will prove to be none too high.

A rough rule, for general purposes, and one which will not lead very far from the truth in the majority of cases, is to allow two and one half per cent. upon the entire cost of the real estate (including both land and buildings) from the total annual expenses. If, then, an investor shall be satisfied with a net income of five and one half per cent., the necessary average rentals may be quickly calculated as eight per cent. upon the price which may be paid for the real estate.

CONTRACT FOR PROPERTY.—After the terms and conditions upon which real estate is to be purchased have been orally agreed upon between the vendor and the vendee, they should be at once put in writing, in the form of what is known as a contract for the sale of land, or a “contract for property.” Upon signing the contract for property, a portion of the agreed purchase-price is paid to the vendor as a consideration for the contract, or, as is commonly said, “to bind the

bargain." Upon general principles, this payment should be as small as the vendor shall be willing to accept; for ever so small an amount will be a sufficient legal consideration, and, if the purchase shall fail to go through, the proposed purchaser may not be able to get back the amount which has been paid on account, because of legal difficulties, or because of a suddenly acquired irresponsibility on the part of the vendor.

A contract for property is an instrument of great importance, since it is the only definite evidence of the actual agreement. It should be drawn in duplicate, each party having one of the copies, and each copy being properly signed and sealed by both parties.

The agreements or clauses which are contained in a contract for property are generally as follows:

A statement of the date of the contract and the names and designations of the parties, the grantor being the party of the first part, and the grantee the party of the second part; an agreement to the effect that, in consideration of the amount which has been paid on account, the party of the first part will sell to the party of the second part the real estate in question, carefully describing the real estate as in a deed of conveyance; an agreement that the party of the first part will deliver to the party of the second part a warranty deed with full covenants for the premises (unless there are reasons for omitting certain covenants)

upon condition that the party of the second part shall pay to the party of the first part the amount of the purchase-price, describing the manner of payment—in cash, by instalments upon certain dates, by notes, or by mortgages, as the case may be; a statement of all mortgages, interest, taxes, assessments, and other incumbrances upon the premises, and an agreement as to how these liens shall be paid; an agreement that the party of the second part will pay the amount of the purchase-price in the manner specified, that the amount which has been paid to bind the bargain shall belong to the party of the first part if the party of the second part shall fail to fulfil the agreement, and that in such case the party of the first part may consider the contract annulled, and sell the property to other parties; and, finally, an agreement that the contract shall bind the parties and their heirs, executors, and administrators, and assigns. The contract should be taken, as soon as possible after the signing, to the lawyers who are to examine the title, with such other papers as the vendor may furnish for facilitating the examination.

IMPROVED AND UNIMPROVED LAND.—In many important respects vacant or unimproved real estate will possess advantages over improved real estate, which, for investors who shall be able and willing to lose portions of their incomes

temporarily for the sake of obtaining ultimately superior investments must entitle it to a decided preference. For reasons which have already been explained, unimproved real estate generally may be purchased to much better advantage than improved real estate; it will be much more likely than improved real estate to increase in values; the danger of being cheated in the purchasing of poor buildings will be avoided by the purchasing of unimproved real estate; and, when finally improved, the owners may be possessed of substantial new buildings which shall be in all respects modern, suitable for the localities of the real estate, and in accordance with the tastes and preferences of the investors. Moreover, for the purposes of ground-leases, the advantages of which will be explained later, unimproved real estate alone will be available without loss from the destruction of buildings.

At this point, the attention of the reader may be called again to the distinction between investments and speculations. With regard to unimproved real estate, the distinction between investments and speculations, although somewhat finer than in other kinds of property, may be stated in this manner: If unimproved real estate shall be purchased, for the purpose of improving or otherwise maintaining it as a means of obtaining regular incomes, although investors may require increases of values before permanent

dispositions of the property can be made, the transactions will be investments; if unimproved real estate shall be purchased for the direct purpose of selling it at some future time at a profit, although the property may be improved for the sake of obtaining incomes while seeking purchasers, the transactions will be speculations.

The regular theory with regard to investments in unimproved real estate is, that real estate shall be purchased during times of depression, and held until such times as it may be advantageously improved by the erection of permanent buildings. For the purpose of earning, wholly or in part, the expenses which will be necessary for the holding of unimproved real estate, property upon which are old buildings, which, while they will add nothing to the cost of the property, will pay small rentals, will be desirable. Such buildings can be let for such purposes as small shops, temporary stables, lumber yards, coal yards, etc., at low rentals, if need be, and thus they may be the means of making real estate considerably less burdensome to the owners.

ERECTION OF BUILDINGS.—When the proper times for the improvement of real estate shall arrive, investors may erect such buildings as will be best suited to the particular localities, taking care to consider the possibilities of future development and the needs of the neighborhoods, and

providing buildings the characters of which shall be considerably ahead of the times, rather than those which may soon become old-fashioned and antiquated. If investors shall be in doubt concerning the styles of buildings which will be most advantageous, or if it shall be desirable to test the conditions of neighborhoods with reference to the numbers and kinds of tenants which will be available, premises may be advertised to the effect that the owners will improve them to suit tenants; tenants will be thus obtained before the erection of the buildings, or the probabilities that satisfactory tenants cannot be obtained will be demonstrated. The responsibilities of tenants who shall be obtained in this manner must be assured; otherwise investors may become possessed of unsuitable buildings in which there shall be no tenants. Moreover, the agreements between investors and tenants, in such cases, should be drawn with great care, covering plainly and thoroughly all points which may possibly be the subjects of misunderstandings or of disagreements.

In the construction of buildings for investment purposes, perhaps even to a greater extent than when buildings are to be used for all purposes, it is important that only builders and contractors of established reputations and responsibilities shall be employed. In theory, owners are presumed to have considerable numbers of estimates, from

different builders, for the construction of proposed improvements, and to sign contracts with the lowest bidders. This theory will prove to be practically satisfactory only when the estimating parties shall be equally competent and responsible. The better rule, in the majority of cases, will be to allow only satisfactory builders to estimate upon proposed buildings, and, even in such cases, after the estimates have been compared, to consider, not only the relative amounts of the estimates, but also the relative merits of the builders. A poorly constructed building will not be cheap at any cost; a building constructed in the ordinary manner will be cheap only if obtained at a low figure; a first-class, exceptionally substantial building may be cheap at a cost which is considerably higher than the average. Builders who are accustomed to doing cheap, poor work, at low figures, and builders who claim to be able and willing to do either good or poor work, according to requirements, may wisely be dispensed with, and such contractors as will not do poor work under any circumstances may well be chosen. For the purpose of selecting builders of the latter kind, the best possible references will be lists of buildings which have been previously constructed by the particular builders; inspections of such buildings will often give all the information which may be necessary in this important respect.

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INCREASES IN VALUES OF LAND.—The methods of reasoning by which the probabilities of increases in the values of real estate must be determined, are complicated by the elements of uncertainty, which are attendant, to a greater or a less degree, upon all considerations which involve future events. As a proposition purely abstract, it may not be denied that the future, with respect to all things, is mysterious and uncertain. But investors must give to this truth only brief contemplation, for the reason that improper dispositions towards timidity, which will uniformly result in disadvantage and lost opportunity, must be avoided. All considerations with reference to the subject of investments must be based upon the presumptions, not only that an unlimited future is positively assured, but that the events of the future will follow fixed and definite rules—rules which have long since been established, and which, consequently, have determined, for our instruction, the events of the past.

The first direct cause for an increase in the value of real estate is an increase in the demand for real estate, or a voluntary increase in the surrounding population; and the first direct cause of a voluntary increase in the population of a particular neighborhood is an exceptional opportunity for making money, or a natural advantage for business purposes.

In order that real estate, which shall be purchased as an investment, shall fulfil entirely the conditions by which the necessary margin of safety will be obtained, the rule of causes, which has been stated, will require that the real estate shall be situated in a neighborhood or locality wherein the amount of business, and consequently the population, will certainly increase. If this increase shall be rapid, the increase in values will be also rapid; if the increase in population shall be spasmodic and irregular, the increase in values will be of the same character; and if the increase in population shall be slow and steady just so slowly and steadily will the values of real estate increase.

Investments in real estate, which will depend, for necessary margins of safety, upon future increases in values, should be made only in large cities; or at least, only in cities which have already become established beyond question as active, permanent business places.

CONTROL OF LAND.—Having now reached the discussion of the second and remaining requisite of safety in real-estate investments, to wit: that the security shall be within the control of the investor, it will be evident, without argument, that this requisite will be satisfied perfectly only when investors shall be the sole owners of their securities. This condition of sole ownership, the

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importance of which has been already explained, will require an especial exposition in connection with the subject of real estate, for the reasons that, owing to the peculiar nature of real estate, joint ownerships will be more common than in cases of personal property, and that an actual division of real estate among several owners, for the purpose of giving each a full ownership of a specific portion, will not always be a simple matter.

The natural and proper desire that valuable real estate shall remain in the families of investors indefinitely, and the natural and proper desire that all children of investors shall be equal heirs or devisees, will result often in joint ownerships (among all the children of deceased investors) of the real estate which shall be owned by investors at the times of their deaths, the real estate being commonly of such a character as to preclude equitable divisions among the heirs in severalty.

In this manner certain parcels of real estate become the joint property of several, and a further descent or devising, which shall be due to the deaths of one or more of the joint owners, will still further complicate the various interests.

Where there shall be several owners of valuable real estate, which, by reason of its unimproved condition, or the divisible characters of the buildings, may be actually divided *pro rata* among

the owners, without injury to the interests of the owners, such a division, to be made by amicable agreement, should be earnestly sought. If a division which will give to each owner a separate portion of the real estate cannot be made, an understanding should be reached by which the division may be carried as far as circumstances will allow; that is, an attempt should be made to reduce, by friendly agreements, the number of owners of each separate plot to the smallest possible.

A method of managing real estate which shall belong to many joint owners having different interests,—a method which will often prove to be a satisfactory means of retaining valuable real estate,—consists of formal written agreements, on the parts of all the owners, giving to one or more of the owners sole charge of the property, and requiring the managing owners to receive the rents and profits, to pay the taxes and other charges, to make the necessary repairs, and, at stated periods, to render accounts to all the owners.

Managing owners, under agreements such as have been described, may be required to furnish bonds for the proper performance of their duties although ordinarily their interests in the particular real estate should be sufficient guaranties.

If, in a particular case, an agreement, of the nature which has been suggested, shall prove to

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be unsatisfactory or impossible of consummation, propositions may be made by certain of the owners to buy out certain others at specified prices; the property may be placed upon the market for sale at a price which shall be agreed upon, in writing, by all the owners; or it may be sold, upon a similar agreement, at public auction.

Finally, if all attempts to arrange matters in an amicable manner shall fail, and the difficulties of the situation shall become too great for solution by any other simple means, a partition suit at law must be brought without delay.

Legal proceedings of this kind are generally expensive and tedious, the costs and counsel fees which are allowed by the courts being in accordance with the complicated nature of the proceedings and the care with which they must be conducted; they should, therefore, be avoided whenever avoidance shall be possible without too great sacrifices to the cause of amicable settlements. Described in as brief a manner as is possible, a partition proceeding is a suit at law which is brought by one or more joint owners of real estate against the others for the purpose of obtaining a judicial division (partition) of the property. The final result usually is the sale of the property at public auction, and the distribution of the proceeds, after deducting costs and expenses, among the former owners, *pro rata*. It will prove to be advantageous to all

owners, therefore, if such proceedings shall be so timed as to bring the auction sales at periods when values of real estate will be at the highest points. The various owners should attend the auction sales, prepared, if possible, to bid in the valuable properties, if such a course shall be necessary to prevent sales at very low prices.

Still another requirement of the rule that the security must be within the control of the investor, is that real estate shall be so located that it may be easily watched and inspected, at frequent intervals, by the owners, or by trusty agents. Taxes must be watched, in order that owners may be able to protest against, and to take timely measures to prevent, unjust and unequal valuations; special assessments must be kept in view, and anticipated, in order that they may be kept within proper limits; possible condemnation proceedings must not be allowed to go by default for want of knowledge and information concerning them; in certain kinds of real estate, squatters must be kept off, lest they become the owners through long occupancy and adverse possession; frauds concerning the amounts of rentals, repairs, etc., must be guarded against; and, in general, owners must be kept at all times well informed with regard to the conditions of their properties and of the surrounding neighborhoods. Accordingly, investors in real estate must make frequent visits to their properties,

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whether the properties shall be near the homes of the owners or far away. And, if it shall be impossible properly to attend to this precaution at considerable distances from their homes, or to accomplish the necessary results by the employment of agents, whose abilities and honesty shall be beyond question, investors must necessarily make their investments of this kind near their homes, although they may thus lose the benefits of extended fields of investment.

INCOMES FROM REAL PROPERTY.—The final consideration with regard to investments (namely, that they shall return fair and regular incomes) remains to be discussed and to be applied to the special case of investments in real estate.

The income from real estate being the difference between the rents and profits, upon the one hand, and the expenditures upon the other, it is evident that the amount of income from a particular piece of real estate will reach its theoretical maximum only when the rents and profits shall be at their highest possible points, and the expenditures shall be at their lowest. But, for general reasons which have been already explained, and for special reasons which will be referred to in the proper place, neither of these conditions is thought to be desirable in its extreme aspect. In accordance with the principle that incomes must be fair and regular, rather than

the highest possible, the statement of these two conditions must be modified and expressed in the following practical manner:

In order that real estate may return fair and regular incomes, it will be necessary, first, that the rents and profits shall be as high as shall be consistent with regularity and the prosperity of tenants; and, second, that the expenditures shall be as low as shall be consistent with the proper conditions of the premises. Since the latter condition may be considered more briefly than the former (which must include the entire subject of landlord and tenant) it may conveniently be treated and disposed of at once.

The subject of expenditures upon real estate (by which is meant regular annual expenditures for the purposes of meeting public charges against the real estate, of keeping the premises in proper repair and security, and of securing and collecting the rents and profits) may be conveniently divided into four subdivisions, namely: taxes and assessments; repairs and ordinary expenses; insurance; and commissions.

TAXES.—Before considering these questions, however, it will be beneficial to give a brief explanation of the method by which the amount of the general tax and the tax rate, for any given locality, are determined. In principle this method is simple, though in detail it is necessarily compli-

cated. The regular total expense of a municipal government is evidently a known quantity, and, with such allowances for uncollectable taxes, and other contingencies as experience has shown to be necessary, the amount which shall be necessary to pay the annual expenses may be ascertained without difficulty a year in advance. This having been accomplished, each parcel of real estate within the tax district is appraised or valued by the public officers, and likewise the personal property which is subject to taxation. The amount which must be raised by taxation is then apportioned *pro rata* upon the taxable property, the total amount of the tax, divided by the total valuation, giving the tax rate or percentage of taxation.

From this explanation it will be seen without difficulty that the valuation of the taxable property and the tax rate are only the quantities which make up the actual amount of the tax, and that the all-important factor in the calculation is the amount of the municipal expenses.

The ignorance of the masses upon this subject has often been taken advantage of for questionable political purposes, the valuations (which in particular cases are known only to the individual taxpayers) being increased in order that the tax rates (which are common to all taxpayers, and which are the common talk of the communities) may be decreased, and the people deceived by

the idea that the taxes have been actually lowered by the economic and wise administration of the political party which is then in power. The one important item in the question of taxation is the public expenditure of the citizens' money, and to this the attention of taxpayers and of honest citizens generally must be directed.

It cannot be doubted that every taxpayer has the general right to demand that the public moneys shall be honestly expended by the public officials. This right is not confined to a mere privilege of protest against public fraud and extravagance, but authorizes the taxpayer to look into the acts and proposed acts of public officials; by the aid of the courts, to prevent frauds and extravagances; and to punish the public officials upon whom the responsibility for such acts shall be fixed.

High taxes upon real estate invariably work hardships and heavy burdens to that class which constitutes a very large majority of the citizens in every community—that is the rent-paying class—without furnishing corresponding benefits to any, unless it be to unscrupulous or over-paid politicians. For, in every regular case, high taxes must result in high rents, and the burden of the taxes must therefore fall upon the tenants; while the landlords, whose rentals will be calculated upon the basis of certain percentages upon the amounts which have been invested, in ad-

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dition to the expenses of maintaining the properties (of which the taxes will be the principal) will receive no benefit from the high rents. Tested by all the legitimate conclusions of logic, as well as by the practical results of ordinary experience, these statements must be generally true. But should they, nevertheless, be doubted, a comparison of tax and rent statistics of various cities will show, beyond chance of misapprehension, that the actual facts fully sustain the logical conclusions.

A widely prevalent, and likewise, an injurious and an erroneous theory, exists among tenants, to the effect that their interests and benefits are, in the main, contrary to those of landlords—that an injury to landlords in general, will rather benefit than rebound upon tenants. Exactly the reverse of this theory is undoubtedly true. If tenants shall vote for, and use their influence for, heavy public expenditures and consequent high taxes, they will be directly responsible for the increases in their own rents which must eventually result; if tenants shall abuse the premises which they occupy, and thus put their landlords to heavy expense for repairs, they are indeed enlisting in the ridiculous cause of increasing the landlords' necessary allowances for repairs, and consequently their own rents; and if tenants shall be unreasonably slow with their payments of rents, or shall otherwise cause trouble or loss

to the landlords, they may properly blame themselves if they shall find increasing tendencies among landlords to make larger allowances for loss of rents and cost of collections. It appears, therefore, that landlords and tenants will be mutually benefited if, instead of imagining a contrariety of interests, they shall work steadily and heartily together for the attainment of low taxes and moderate rents.

The law requires that taxes shall be equal and uniform; that is, real estate having equal values in the same neighborhoods must be equally taxed; real estate having exactly twice or thrice the values of other pieces of real estate must pay exactly twice or thrice the amount of taxes which shall be paid by the latter. All tax valuations are open for the inspection of the public, at the proper public offices, and for specified times before the taxes shall be confirmed. Careful and prudent taxpayers will, each year, compare the valuations of their own real estate with those of neighboring pieces of real estate, and will take prompt and energetic measures to maintain the required uniformity of taxes.

If an inequality of valuations shall be discovered, to the injury of a taxpayer, a carefully written statement of all the facts of comparison, with a request for a proper correction of the particular valuation, should be at once sent to the public officers who are authorized by law to

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correct such errors—the tax commissioners, commissioners of appeals, board of equalizers, etc., according to the nomenclatures of the different States; and if just and uniform valuations cannot be obtained by this simple means, the desired result must be obtained by means of regular legal proceedings.

In a given locality, taxes are due and payable at the same time each year. Generally, reductions of the regular amounts of taxes, in the form of rebates, are allowed upon all taxes which shall be paid before certain designated times, or penalties are added to the regular amounts of taxes the payment of which shall be delayed beyond certain times which are prescribed by the laws. It is therefore directly advantageous that taxes shall be paid at the earliest possible times after they shall have become due and payable.

In general, special assessments are subject to the rules and regulations which govern the regular taxes, with the exception that the former are necessarily irregular and occasional. They must be anticipated whenever the opening of streets, paving, sewerage, and such improvements shall be proposed, and the methods which have been suggested must then be regularly followed.

Tax bills are to be obtained at the proper times from the public officers for the collection of taxes (according to the practices in different States, the county treasurer, the city treasurer,

the town treasurer, the collector of taxes, the receiver of taxes, etc.) upon application in person or by mail, and should be paid by means of checks drawn to the orders of the proper public officers. The bills should be inspected and compared with those of previous years, or with the maps and books in the offices of the tax departments, in order to avoid mistakes in the descriptions of real estate; the amounts of tax bills should also be verified by computing the correct amounts from the given valuations and tax rates.

REPAIRS.—The second sub-division of the subject of expenditures upon real estate has been chosen under the title of repairs and ordinary expenses. Concerning the latter, little need be said. They consist of such items as janitors' wages, engineers' wages, the wages of other employees, coal, gas, and material and implements for the use of janitors and other employees. The same care and scrutiny in such matters as are exercised by prudent and judicious persons in the general management of employees and in the purchasing of necessities will be necessary.

With regard to the very important item of repairs to real estate, the first principle must be that repairs shall be, in all respects, sufficient for the proper preservation of buildings. Premises must be kept in good repair, else their con-

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ditions will become rapidly poorer, and the rentals will decrease in equal ratios.

Covenants, by which tenants agree to make all necessary repairs to the premises which they occupy, are commonly included in properly drawn leases; the importance of such covenants will be more evident after a study of the chapter upon the subject of landlord and tenant. In practice, however, it will be necessary that landlords shall calculate upon making and paying for all, or practically all, repairs to their premises, notwithstanding the covenants which provide for a contrary manner of proceeding. It may be taken as a general rule, that tenants will not pay for repairs to the premises of their landlords unless they shall be compelled to do so by process of law, even though they shall have expressly agreed to do so.

Theoretically, the repairs which shall be made upon investment buildings must be sufficient to keep the premises always in the same conditions with respect to appearances, and general convenience, or desirability for the purposes for which they are intended. Such a statement follows from the fundamental principle that rentals and rental values must not be allowed to decline. The same method of reasoning will lead to a higher and more perfect theory: that, in order that rentals shall continually increase, sufficient amounts of repairs must be

made to improve continually the conditions of buildings.

But, unfortunately, neither of these theories can be perfectly applied in practice, for there are many elements, making up the rental values of buildings which cannot be governed by the extent of repairs.

Natural wear and tear, old age, modern discovery and improvements which are included in newer buildings, are factors which can neither be neglected nor entirely overcome.

The modified general rule in practice must therefore be that buildings which are used for investment purposes must be given sufficient amounts of repairs to maintain them, as nearly as is possible, in uniform conditions, with respect to the particular purposes for which they are used. Certain kinds of repairs, which are necessary for the prevention of actual decay and dilapidation, cannot be avoided or neglected under any ordinary circumstances.

One particular class of repairs to real estate seems to require a special consideration, *i. e.*, repairs which amount to alterations in the general characters or constructions of buildings. Such repairs or alterations are generally in the form of changes in the arrangements which are made to suit new uses and kinds of businesses; or changes which are made for the improvement of buildings, by the addition of modern con-

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veniences, such as elevators, steam heaters, electric lights, etc. When repairs of the first kind shall be contemplated, it will be necessary to calculate the costs and the benefits, in the form of increased rents, more carefully than in those of the latter kind; for special alterations which are improvements only for special branches of business will result in increased rentals only when tenants who are engaged in the special branches of business shall be obtained and secured, while general improvements of the latter kind, if properly made, will surely be the means of increasing, to a greater or a less extent, the rentals.

The first consideration concerning special business alterations of real estate must be that the increases of rentals shall be sufficient to pay interest upon the first costs of the alterations, repairs to, and extra taxes and insurance on account of, the alterations, and also the annual sinking funds which must be allowed upon the costs of the alterations. If a prospective tenant shall desire special alterations, which probably will be useless after the expiration of his lease, the entire cost of the repairs, together with the interest and other allowances, must be added to the regular rent for the term of the proposed lease. On the other hand, if the usefulness of proposed alterations will outlast the terms or occupancies of the tenants for whom the altera-

tions shall be made, the annual sinking funds must be calculated in the usual manner, by estimating the probable lives of the alterations and by dividing the costs by the number of years which shall be furnished by the estimation. In such a case, the correct provision for the sinking funds which must be added to the regular rent during the occupancy of the special tenant will be simply his own share of the sinking fund—that is, the annual sinking fund, obtained in the regular manner during his occupancy—leaving for future tenants the making up of the balance.

A second and very important consideration, which will be necessary in cases of special alterations, is the reasonable certainty that tenants for whom the expenses shall be incurred, will occupy the premises, and will pay their rents during the full terms of their leases. Alterations of this kind should not be made unless tenants shall furnish ample securities, or other guarantees for the performance of all their agreements with respect to the premises.

The general rule with regard to alterations of buildings by the addition of modern conveniences which may have been introduced to the public since the erection of the buildings in which the improvements shall be contemplated, may be stated as follows:

The addition of actual conveniences will result in increases of rentals, provided the improvements

shall be suitable in all respects to the premises. If the construction of a building which is to be improved in this manner shall be such that the particular modern convenience cannot be added without producing corresponding injuries which will more than counterbalance the improvement, evidently the building will be better without the proposed change.

FIRE INSURANCE.—The insurance of buildings and fixtures against loss or damage by fire is a matter of great importance to investors, and, at the same time, one which is commonly passed over, with by no means an adequate consideration, as a positive, though disagreeable necessity.

The necessity for fire insurance rests upon the all-important principle of security, insurance being the nearest approach to a perfect means of making secure and permanent the buildings and fixtures by means of which real estate is made to produce incomes. This statement will evidently bring the general subject of insurance within the operation of the familiar rules of investment which have been explained in the earlier portions of this work. The general rule, therefore, must be that buildings are to be kept fully and continuously insured in the best companies which shall be available for the owners.

A fire insurance policy is a contract between the insuring company and the insured property

owner to the effect that the former will pay to the latter any loss or damage by fire which may occur to certain specified property, between certain fixed periods of time, and not exceeding a certain specified amount, in consideration of a certain amount of money which is called the premium, and which has been paid by the latter to the former. The amount of the premium is determined from the amount of the policy (or the amount which shall be fixed by the policy as the limit to be paid in the event of the entire destruction of the property insured) and the rate or percentage which is charged by the company.

The rates of insurance vary according to the chances of fire, or risks, as they are estimated by the insurance companies. Risks are divided into arbitrary classes, such as uninsurable, extra hazardous, hazardous, ordinary, etc. They are determined by such conditions as the characters of buildings (frame buildings, buildings of brick or stone, buildings having wooden beams, floors, etc., fire-proof buildings, buildings containing various kinds of machinery, heating apparatus, steam boilers, etc.), the locations of buildings (whether in proximity to dangerous fire risks, or at safe distances), and the uses and occupations for which buildings shall be employed.

Since the rates of insurance, and consequently the actual costs of insurance, will be seriously affected by conditions such as have been men-

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tioned, the importance of careful considerations of the subject, in connection with the purchasing or erection of investment buildings, the selection of tenants, the kinds of business, and the general management of this kind of property, will be sufficiently obvious.

Fire insurance is usually obtained through regular insurance agents, and the selections of such agents will be matters of importance, since, to a certain extent at least, they must be depended upon for the required knowledge concerning the standing of various insurance companies, as well as for the prompt renewals of expiring policies, and for the proper discrimination between companies with reference to the rates which shall be charged, in order to avoid both needlessly high premiums and the placing of insurance with irresponsible companies for the sake of economy.

Only agents of well-known ability, responsibility, and integrity should be employed; and they should be instructed to place insurance in none but first-class companies. As an additional safeguard, and in order that too great a reliance upon agents may not be required, owners of insured property may, with advantage, keep themselves in a general manner informed as to the conditions of the various companies, by paying attention to any important statements concerning such matters which may occur in the daily newspapers, by studying the effect of large fires upon

the different companies, and by examining the reports of financial conditions which are issued by the companies.

Insurance policies should state correctly the names of the persons to whom losses if any are to be paid, and also the estates or interests of the insured persons in the property which is insured, such as "owner," "mortgagee," etc. The amounts of the policies, and the exact terms or durations must be plainly mentioned in the policies, the usual form of statement being to the effect that the insurance company does insure Mary J. Doe as owner, for a term of so many years from such a day at noon to such another day at noon, against loss by fire, to an amount not exceeding so many dollars, to certain described property.

Insurance policies must be signed by the companies, usually by such of their officers as the president, secretary, or manager; otherwise, there will be no written contracts between the companies and the owners. In some policies the signatures of the necessary officers are printed in the regular places for the signatures (in order to avoid the serious task of obtaining written signatures of these officers on each of the numerous policies which shall be issued by the companies), in which case the policies contain a clause to the effect that they shall not be valid until they shall be countersigned by the duly authorized agents

of the companies, at certain places (designating the office addresses or the cities), or spaces for the written signatures of the agents, with the words "countersigned at—, this — day of —, 1897. —, Agent." In such cases, the signatures of the agents must, of course, be affixed to the policies in the proper places.

Other clauses which are of importance to property owners, and which, therefore, should be attached to fire insurance policies, are: the clause permitting other insurance without notice; the lightning clause, which provides that the companies shall be liable for direct losses which shall be caused, by lightning; the clause permitting mechanics to make ordinary alterations and repairs, without notice to the companies; and that allowing the use of oil for light, and the vacancy of buildings for certain periods of time.

The common method of insuring a building which is in course of erection, is for the owner to take out a separate policy at the time of each payment to the builders, each policy covering the amount of the last payment. Such policies should contain a clause by which the companies shall agree to assume the builders' risks while the building shall be in an unfinished state.

An insurance policy which is about to expire may be renewed, either by the issuing of a new policy, dating from the time of expiration of the old policy, or by means of a certificate of renewal,

which is a simple certificate stating that, in consideration of the amount of the premium, policy No. — is renewed for a certain designated period of time, giving also the name of the insured, the amount of the insurance, and a brief description of the premises insured, and signed in the same manner as is the policy. Upon receiving a renewal certificate from the insurance agent, the owner should compare it carefully with the expiring policy, and attach it to, or file it with, the policy which it is intended to renew.

Any changes in the ownerships of buildings, without the consents of the insuring companies; fraudulent representations to the agents of the companies, concerning the characters or conditions of buildings; changes in the uses and occupations of buildings, by which the risks of fire shall be increased, without notice to the companies; fraudulent acts of owners, which shall cause or increase the losses by fire; or unreasonable delays in notifying the companies of losses by fire, may entirely invalidate insurance policies, and discharge the companies from liability. If, therefore, there shall be changes of ownership, or of occupancy, such as will increase the risks, or losses by fire, the agents must be at once notified, in order that they may obtain the consents of the companies to the changes or the adjustment and payment of the losses.

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COMMISSIONS.—The last general item in the subject of expenditures upon real estate—commissions—may be treated more briefly; it involves simply the making of advantageous agreements for the management of real estate, with agents who shall be in all respects satisfactory.

The selection of an agent for the purpose of taking charge of improved real estate, obtaining tenants, collecting rents, in some degree determining the characters and occupations of the tenants, selecting employees, and making expenditures, is a question of great importance, no less than of considerable difficulty to owners of real estate. An unwise or an unfortunate selection of an agent will often result in bad tenants; serious injuries to buildings, notwithstanding excessive expenditures for repairs; loss of rentals through carelessness and incompetence; and finally, perchance, the entire loss of a month's or a quarter's rentals through the absconding and defalcation of the agent.

Owners of real estate must devise for themselves methods of protection against the frauds of dishonest agents. With this principal object in view, the first rule for the selection of real estate agents will be that only those of established reputations, whose businesses are apparently too profitable to admit of fraudulent actions, are to be employed. The remaining suggestions will be in the way of additional precautions against

the possibilities of loss by the frauds and mismanagement of agents. Agents, in important cases, may be requested to furnish bonds for the faithful performance of their duties; and to this proposition many agents and brokers will offer no objection.

Whenever it shall become necessary to replace agents who have had charge of real estate by new ones, notices must be at once given to all tenants to discontinue payments of rents to the former agents and to pay the rents to the newly appointed agents until further notice.

Commissions for the sale of real estate, for the leasing of improved real estate, and for the collection of rents, are usually in the form of percentages.

With regard to all kinds of real estate commissions, prudent investors will take pains to have exact understandings with agents and brokers before the commissions shall be earned, for the excellent reason that such understandings will often be the means of preventing the charging of exorbitant commissions. It may well be added that there will be no impropriety in bargaining with real estate agents for the lowest rates of commissions which shall be consistent with proper performance of required duties, without regard to any arrangements or rules which may have been made by real estate exchanges, or other associations of agents and brokers,

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for the maintenance of uniform rates of commissions.

In a case where the services of real estate brokers shall have been performed by a single person or firm, there can be no difficulty in determining the party to whom the commission shall be due; but, where there shall be several agents or brokers concerned in a single transaction, controversies as to which shall be entitled to the commission will often arise, and if the commission shall be paid to the wrong party, the investor may be put to the inconvenience of paying it a second time to the rightful party, without the possibility of recovering it from the wrongful one.

The deciding legal principle in such cases is that the agent or broker, who shall be the "efficient or procuring cause" of the particular transaction is entitled to the commission; and this principle, although somewhat unsatisfactory, cannot well be further elucidated in a work of this nature. If there shall be serious doubts in the mind of an investor, as to which agent or broker, in a particular transaction, actually was the procuring cause, all parties who may have claims to the commission, should be interviewed before the payment of the commission, with a view to an arrangement which shall be satisfactory to all parties; and if such an arrangement cannot be made, the investor must choose between the

alternatives of consulting a lawyer and of taking the chances of a payment to the wrong person.

With respect to the regular commissions of real estate agents, for the general management of investment real estate, such as renting, the collection of rents, the making of repairs, and the exercising of the usual supervision, a simple and satisfactory arrangement seems to be that the agents shall perform all the regular duties; that they shall receive, as compensation, each month or quarter, agreed percentages of the gross amounts of rents which shall have been collected during the period; and that either party may terminate the agreement by giving certain notice to the other.

The actual rates of percentages of commissions which are paid to real estate agents vary to such an extent that no specific figures can be given; the reasons for such variations will evidently be the differences between localities, the ease or difficulty with which different kinds of real estate can be rented and the rents collected, and the relative amounts of rentals from different properties. An owner who shall be possessed of a large amount of improved real estate, in the immediate vicinity of the real estate agents' places of business may reasonably expect to pay lower rates of commissions than one whose investment properties shall be small and at points which are remote from the offices of the agents;

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and so the owner of a large office building, which shall be continuously filled with prompt-paying tenants, may easily obtain first-class agents who will take charge of the real estate at low rates of commissions; while the owner of low class tenement houses, or other troublesome buildings, which shall be difficult to rent, and shall offer greater difficulties to the prompt collection of the rents, will be obliged to pay high commissions in order to obtain satisfactory agents.

The business abilities and reputations of agents will also affect the rates of commissions (although apparently not to so great a degree as in other branches of business), capable and responsible agents naturally and properly requiring higher compensations than will suffice for those who are inexperienced and irresponsible.

CHAPTER IX

LANDLORD AND TENANT

HAVING obtained properly conditioned, and properly improved real estate for the purposes of investment, the question next in order will be concerning the best means by which the property shall be made to produce the required incomes; and the answer evidently must be, "by leasing the premises to satisfactory tenants."

This is the universal method of obtaining incomes from investments in real estate. We must, therefore, give to the subject the attention which its great importance plainly demands.

LEASES.—A lease is called an *indenture* of lease, from the fact that formerly certain legal instruments were written upon parchment, with some word written in the spaces between the duplicate parts, and were then cut apart with notched or *indented* lines through the particular word, leaving parts of each letter on either side of the lines, as a means of identification of the duplicate parts.

A lease is a contract, between a landlord on the

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one side and a tenant on the other, which gives to the tenant the possession of the landlord's real estate, for life, for a certain fixed term, or at will, in consideration of the rentals which are agreed to be paid by the tenant. In other words, a lease is a contract, or an instrument, which creates an estate in land for life, for years, or at will.

The regular clauses which are contained in an ordinary lease are in effect as follows:

A statement that A. B., party of the first part (the landlord) has leased to B. C., party of the second part (the tenant) certain described premises, for a certain specified term, at a specified rent, payable at certain times and in certain specified amounts; a covenant that, if the party of the second part shall make default in any of the covenants of the lease, the party of the first part may re-enter the premises, and remove all persons therefrom; a covenant that the party of the second part will pay the rent in the manner specified in the lease, and, at the expiration of the term, or sooner termination of the lease, will quit and surrender the demised premises in as good a condition as reasonable wear and use thereof will permit, damages by the elements excepted; a covenant of quiet enjoyment, to the effect that the party of the second part, upon paying the rent and performing the covenants of the lease, shall and may peaceably and quietly have, hold, and enjoy the demised premises for

the term specified; and the usual conclusion, "In witness whereof the parties to these presents have hereunto set their hands, etc.," with the signatures of the parties, attestation clause ("signed, sealed and delivered in the presence of"), and the signatures of the witnesses.

Such a lease will, obviously, allow to a tenant a wide latitude in the use of the premises which are demised by the lease. The premises may be used for any legitimate business; they may be used and occupied at all hours of the day or night; the tenant may sublet the premises or assign the lease to persons and uses which may be entirely unsatisfactory to the owner—in a word, the tenant will be obliged only to pay the rent, to refrain from actually abusing the premises, and to occupy the premises for purposes which are not declared by the law to be unlawful.

The following are brief descriptions and explanations of covenants which should be included in all leases under which circumstances may, by any reasonable possibility, render the special covenants desirable from the owners' points of view:

The simple clause which requires the tenant to quit and surrender the premises in as good a state and condition as reasonable use and wear thereof will permit will go but a short distance in the direction of protecting premises from actual injuries; for the scope of the words

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"reasonable use and wear," unless their significance shall be modified by other covenants, or facts, will be wide enough to cause, in many cases serious damage to the owners of real estate. Reasonable use and wear of a building which shall be used for the business of a worker in heavy metals, and which building shall not be designed for such purposes, may easily result in great damage to the premises. So the nature of many other branches of business is necessarily such that only buildings which shall be especially constructed will be able to endure the excessive wear, without serious and lasting injuries. The covenant, on the part of the tenant, to repair, is broad enough, in its general significance, to relieve the landlord of the expense of making the repairs, and to compel the tenant to make them in all cases where tenants shall be actually responsible, or shall have furnished actually responsible sureties.

Although, in the majority of cases in which the amounts of necessary repairs shall not be large, the owners will find it to their advantage to make the repairs themselves, in preference to the difficulties of legal proceedings against tenants; still there will always be possibilities of extensive damage to leased premises, involving heavy expenditure, and against these owners must endeavor to protect themselves. The covenant which requires tenants to make repairs will,

moreover, often exercise a restraining effect upon tenants who, otherwise, will show very little regard for the properties of their landlords; for tenants, as a class, be they ever so responsible, are, like the majority of mankind, at least willing to avoid trouble and legal complications which interfere materially with proper attention to business when the cost of such avoidance will be only the using of the premises which they occupy in reasonably careful manners. The covenant which is in question may also be the means of preventing suits against landlords for damages growing out of alleged personal injuries, which shall be due to negligence with regard to the conditions of their premises; or at least the covenant will often furnish a legal recourse against tenants in cases of such suits for damages. So, also, the covenant will prevent claims by tenants for damage from leaking roofs, defective plumbing, etc., as well as removing legal reasons for quitting premises, under the statutory eviction acts, which allow tenants to surrender premises which have become untenable.

A clause which is known as the "fire clause" is commonly included in leases, for the purpose of making definite provisions for the effects of possible fires upon leases. The clause is to the effect that if the buildings upon the demised land shall be partially damaged by fire they shall be repaired by the landlords; in case the damage

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shall be so extensive as to render the buildings untenable, the rents shall cease until such times as the buildings shall be put in complete repair; and in case the premises shall be totally destroyed by fire or otherwise, the rents shall be paid up to the time of such destruction, and then and from thenceforth the leases shall cease and come to an end; provided the damage or destruction shall not be caused by the carelessness, negligence, or improper conduct of the tenants or their agents or servants.

A covenant, which should be included in all leases, except those of premises which are to be used for businesses which will necessarily place insurance rates at the highest, is that by which tenants agree that they will not occupy demised premises for purposes which are deemed to be extra hazardous. This covenant is often included in one which contains also a clause against assigning the lease or making alterations in the demised premises; thus, the tenant covenants that he "will not assign this lease, nor let, nor underlet the whole or any part of the said premises, nor make any alteration therein, without the written consent of the party of the first part, under penalty of forfeiture and damages; and that he will not occupy or use the said premises, nor permit the same to be occupied or used, for any business deemed extra hazardous on account of fire or otherwise, without the like consent,

under the like penalty." This entire covenant may well be contained in leases generally.

Every properly drawn lease should contain a covenant to the effect that the tenant will occupy the leased premises, and allow the same to be occupied, only for specified purposes, unless upon the written consent of the landlord.

In general, landlords have no right to trespass upon their premises, while the possession of the premises shall belong to their tenants. Unpleasant, if not serious difficulties, with regard to just what acts of the landlord will constitute a trespass against the tenant, may be easily avoided by including in leases clauses which shall provide properly for such occasions. Leases may, therefore, specify that the landlords shall have the right to show the premises at reasonable hours to persons wishing to purchase or hire; to put notices "for sale" or "to let" upon the buildings at certain times of the year; and to enter the premises, at proper and reasonable hours, for purposes of inspection, making alterations, repairs, etc.

Still another clause which will be found to be beneficial to the owners of premises which are situated in cities or villages having various departments, etc., is a covenant by which tenants shall agree promptly to execute and comply with all rules, orders, and regulations of the city government and its departments, and also to

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execute and comply with all rules and orders of the fire underwriters for the prevention of fire.

The general rule with regard to the agreements which should be contained in leases in special cases must be that there shall be no verbal agreements of importance between landlords and tenants; that is, that all special agreements between landlords and tenants shall be carefully included in the written leases.

Covenants against nuisances, machinery, steam boilers, or heavy loads; covenants to prevent occupancy of premises during the night hours or on Sundays and legal holidays; and covenants providing for the payment of water rents or taxes, and gas bills, in cases of extraordinary consumption of water or gas, may be included in leases in the proper cases. And finally, in all important cases, landlords should look well after their own interests in the drawing of their leases, understanding fully the fact, that ambiguous and uncertain agreements between landlords and tenants will, more often than otherwise, meet with judicial constructions which will result to the advantage of the tenants.

In the case of a large building which shall be occupied by a number of tenants, an excellent plan, with regard to the proper restriction of the various tenants, is the adoption of a number of suitable rules and regulations for the building, a printed copy of the rules being attached to each

lease, and each lease containing a covenant, on the part of the tenant, to comply with and execute the rules and regulations of the building.

Concerning the terms or durations of leases generally—whether long terms or short terms will, in the main, be most advantageous to owners of real estate—it is evident that the rule must depend upon particular circumstances in each special case; although, in a certain broad sense, it may be said that long-continued and uninterrupted occupancy by a single tenant is deemed to be of material advantage to premises which shall be so occupied.

Considering the question to be dependent solely upon the amounts of rentals which shall be obtained, landlords must exercise, to the best of their abilities, their judgments with regard to future conditions, seeking responsible tenants for long terms when there shall be prospects of lower prevailing rents in the future, and giving leases only for short terms when the prevailing rents in the neighborhoods of their premises are likely to become higher.

The possibility of difficulties which are especially attendant upon long leases have induced many landlords to adopt the practice of giving only very short leases—commonly (especially with tenement houses, apartment houses, and certain kinds of loft buildings and small office buildings) only from month to month—the theory

being that all care and difficulty in the drawing of leases may thus be dispensed with, because all undesirable tenants may be turned out of the premises before they shall have had opportunities for extensive injuries. This method of very short terms will afford an easy solution of the difficulty in cases where irresponsible tenants will be in the majority; it is especially useful in cases of apartment buildings, where the danger of occupancy by tenants who will use the premises for disreputable and illicit purposes is a serious consideration. But, on the other hand, tenants who shall be in all respects first class cannot easily be induced to accept such temporary arrangements, being naturally unwilling that their possession of residences and of business places shall be to so great an extent precarious. So, tenants who shall propose to expend considerable amounts in the preparing of premises for the purposes of their occupancies,—in decorations, in the erection of machinery or trade fixtures, in the costly moving of extensive stocks in trade, or of valuable furniture,—will not be willing to incur expenses of this kind unless their leases shall assure them of possessions of the premises for at least reasonable terms.

Long-continued occupancies of buildings by the same tenants will, without doubt, prove to be beneficial to the general reputations of the buildings among tenants, as indicating landlords,

rents, business facilities, and general conveniences which will be generally satisfactory to tenants; and conversely, too frequent changes among the tenants of buildings will not fail to suggest to tenants generally the fact that something must be wrong with the premises, and will give to the buildings bad reputations which will often prove to be seriously injurious. So also the amounts which must necessarily be expended for repairs upon buildings will be much less in cases of long leases than in cases of short ones; and the same will be true with regard to loss of rentals which is due to vacancies while making repairs and obtaining new tenants.

An important objection to long leases is that they will often interfere with the sales or other proposed dispositions of the premises upon which they are incumbrances, many purchasers of real estate desiring the immediate and free and clear possession of premises which they shall purchase, for purposes of their own; moreover, tenants often take advantage of such circumstances to exact exorbitant sums from those for whom it may be necessary to purchase the discharges of the leases. If, therefore, there shall be probabilities that it will be necessary or advisable to sell a particular piece of improved real estate in the near future, or to make any other particular disposition requiring the unincumbered possession of the property, the terms of the leases must be regu-

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lated accordingly. With this end in view, leases for considerable terms are sometimes given, with covenants to the effect that, if the owners shall desire to sell the premises, during the terms of the leases, they shall give certain written notices to the tenants, and that the tenants will thereupon quit and surrender the premises to the landlords.

Similarly, if there shall be several tenants in one building, the various leases should be so termed that all will expire upon the same date; for, otherwise, a single tenant, occupying ever so small a portion of the premises, will, if the unexpired term of his lease shall be sufficient, be able to demand his own price for the surrender of the small portion, without which the possession of the premises will be useless.

A common and very unwise practice among landlords is to give to their tenants privileges or options for extensions of the terms beyond those which are specified in the leases.

Such agreements will evidently have the effect of binding the landlords to long terms, while the tenants will be free to choose for themselves the lengths of their terms. If, in such a case, rents in the particular neighborhood shall show tendencies of decreasing, the landlord must expect his tenant to choose a short term, and then perhaps to take himself to other premises at lower rents; and if the rents in the neighborhood

shall give indications of becoming higher, the landlord will derive no advantage from the circumstance, for his tenant will demand, and may lawfully obtain, an extension of his term at the former low rents. For these reasons, privileges of further terms should never be given, except in cases where such disadvantageous concessions shall be absolutely necessary for the renting of premises; and where such concessions cannot be avoided tenants should be required to give to their landlords ample notices of their intentions with regard to the extensions of their terms.

SECURITY FOR RENT.—If, by some unfailing method, all danger of losing rents could be removed, and the tenants' prompt payment of rentals could be positively assured, the question of the exact times of the payments—whether in advance or otherwise, by the month or by the quarter—would become merely one of mutual convenience between landlords and tenants. But the fact is that landlords cannot safely rely upon the responsibilities of tenants generally; notwithstanding all such precautions as the obtaining of references, statements regarding financial responsibilities, and even the requiring of securities for the rents, owners of real estate must seek, by the manners in which the payments of rents shall be required, to find additional assurances of the tenants' prompt performances of their covenants.

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Hence the common practice of making rents payable monthly in advance, or quarterly in advance.

This method, although it may be a step in the right direction, must receive no higher commendation than it actually deserves. While it is often thoughtlessly looked upon as being equivalent to an actual security for rents, even if promptly complied with, it will, in fact, amount merely to a security for the rents for the periods between the times of payments. If the rent of certain premises shall be payable monthly, and not in advance, the irresponsible tenant, by quitting the premises at the end of the month, and before the payment of rent for the particular month shall have been made, may defraud his landlord of one month's rent; while, if the rent shall be payable monthly in advance, the rent for the particular month will have been secured to the landlord, if the landlord shall insist upon proper punctuality, by its previous payment. If the payments of rents shall be quarterly, at the end of each quarter, the landlord may be defrauded of three months' rent by the tenants disappearance at the end of a quarter without the payment of the quarter's rent; while, if the quarterly payments of rents shall have been made in advance, the schemes of the dishonest tenants will evidently come to naught. It follows that landlords may advantageously strive to receive

the payments of their rentals as far in advance as possible.

The determination of the numerical amounts of rentals which will be necessary for satisfactory investments in real estate, is, as has been shown, a comparatively simple matter of arithmetical calculation. The securing of rentals, or the making of their collection sure, will in most cases prove to be an entirely different matter. This question it is, with its attendant and constant arrears of rents, and suits and proceedings at law to enforce their payments, which presents to the majority of landlords their greatest difficulties. Having been deprived generally, by changes in the laws, of former remedies for the enforcement of the payment of rents; having no adequate means of collecting rents from irresponsible tenants, or from tenants who may become irresponsible at will; and having no redress from the continued failure of tenants to pay their rents, except the ousting of the tenants, and the consequent vacating of the premises; landlords, as a class, find themselves confronted by perplexities the solutions of which, in many cases, appear to be well-nigh impossible.

The question of making the collection of rents sure will, evidently present the least difficulties in cases where real estate shall be so conditioned as to be in regular demand by tenants of the most responsible characters; and the greatest diffi-

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culties will be present in cases where there shall be such scarcities of tenants or where tenants shall be of such irresponsible characters that landlords must choose between the chances of considerable losses of rents and the certainty that their buildings will stand vacant and idle.

In the discussion of the various methods of securing rents and of the characters of tenants generally, it will evidently be necessary to set out with the assumption that the real estate to which the discussion will be applicable shall be, at the worst, of such characters as to permit of some choice with regard to tenants. In other words, the discussion will apply only to real estate which shall be, at least, not below the average with regard to renting qualities. Owners of real estate, which shall be below this standard in character, must strive to bring out the best possible results, against adverse circumstances, obtaining the best available securities whenever possible, and renting their premises without securities, when the only alternative shall be the vacancy of the premises.

All methods of securing the rents from real estate may be included in two general classes of tenancies: first, that in which the tenants themselves shall be of undoubted responsibilities; and second, that in which the tenants, not necessarily responsible themselves, shall furnish responsible

sureties, or other practical security for the performance of their covenants.

Just what elements must go to make up the undoubted responsibility of tenants which is required in the first class, especially in our times of rapidly changing circumstances and of increasing difficulties in the way of enforcing obligations, and just how the necessary responsibility may best be determined, are questions which are not without serious difficulty.

In many cases, financial responsibility will be found to be of an extremely transient nature. The responsible man of to-day may (by the employment of some simple means of transferring his property) in a short time transform himself into one against whom judgments will prove to be not worth their costs.

The person of real financial responsibility must be one who not only shall be the owner of ample property, over and above all debts and obligations,—property which can be sold under execution—but also one who, because of well-known and long-established character for stability and substantial qualities, is likely to remain in the possession of his property. He must be engaged in no hazardous business; he must be no speculator, no indorser or discounter of notes, no commercial weather-cock.

There are in most of the cities of our country certain business firms which have been for many

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years engaged in the same line of business, and the reputations of which for stability and responsibility seem to have been long ago perfectly established. Such firms or persons will generally prove to be satisfactory tenants in all respects, and, unless there shall be reasons to suspect changing circumstances, are, in general, much to be desired as tenants. But in such cases landlords may well have a care that the highly reputable firms or persons shall, themselves, be identified with and bound by the leases—that the leases shall not be signed by agents or attorneys, who may be found to have no authorities to bind the responsible parties.

Probably one of the best methods for determining the business characters and responsibilities of proposed tenants will be the employment of the mercantile agencies which have been formed for the purposes of such investigations. The reports of the mercantile agencies are often very accurate and complete, giving statements of former occupations, general reputations, ownership of real estate or of other property, unsatisfied judgments and legal or financial difficulties of the persons or firms whose reputations shall be examined by them. In this manner facts of importance, which may be discovered otherwise only with great difficulty, will often be disclosed.

There are several different methods by which tenants, although they may be entirely irre-

sponsible themselves, may furnish satisfactory securities for the payments of their rents, and for the performance of their covenants. The first method to be mentioned, as perhaps the most common, is the furnishing of responsible sureties, or, in other words, the furnishing of responsible and satisfactory persons who shall agree to make good any deficiencies on the parts of the tenants. With regard to the responsibilities of sureties, the rules and suggestions which have already been given for the determination of the responsibilities of tenants, must be closely observed, with only such modifications as will be suggested by the fact that the sureties themselves may be neither tenants nor business men. Sureties should invariably be required to sign written agreements, by which they shall bind themselves to become sureties for the prompt payment of the rents and for the proper performance of all the covenants of the tenants, and by which they shall promise to pay to the landlords any arrears of rents and any damage which they may sustain by reason of the non-performance of the tenants' covenants.

Tenants may also provide what appears to be a most satisfactory kind of sureties, by the employment of first-class surety companies, or other corporations which are organized for the purpose of guaranteeing the performance of the agreements of others. In all cases of sureties, owners of real estate must make use of independent judg-

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ment applicable to the special conditions of the cases, computing, if necessary, the actual costs to them of the proposed sureties, and deciding from all the circumstances whether security, and if any, just what kind, will prove to be to their advantage.

With the exceptions which have been suggested, it may be remarked that, with respect to desirability, the method of sureties may be placed in the same class with that of responsible tenants, both methods depending eventually upon questions of personal responsibility.

We now come to the consideration of the method of making the collection of rents sure, which, under proper conditions, may be regarded as the most perfect and satisfactory of all practical methods, to wit: that of requiring tenants to expend considerable amounts in the improvement of the premises, prior to, or as soon as possible after, the commencements of their occupancies. No argument will be necessary to prove the statement that a tenant who shall have expended large sums of money in permanent improvements upon his landlord's premises will be very loth to leave the premises before the expiration of his term for the purpose of avoiding the payment of the rent; it is equally evident that, if the expenditures of the tenant shall have been properly directed by the landlord, they will be able to afford ample compensations for any losses

of rents which the landlord may suffer by reason of the tenant's default in payment, or the temporary vacating of the premises.

Owners of real estate, having taken care that the improvements which shall be made by their tenants are actual benefits to the premises, may also take into consideration the values of the improvements, which will revert to them without direct expenditure, before determining the total profits which will accrue to them from the transactions.

The first condition which will be necessary for the success of the method will evidently be, that the agreements of proposed tenants with regard to the making of expenditures upon demised premises shall be assured of fulfilment. It will be scarcely necessary to remark that the danger of disagreements and the consequent failures of the proposed arrangements will be at its greatest before the expenditures by the tenants shall have been made, or, in other words, before the securities shall have been fully established; and, therefore, that there will be need of great care and attention on the parts of owners during the construction of the improvements. For in the establishment of the securities lies the gist of the entire plan. Especially will there be need of caution in this respect when the nature of proposed improvements shall be such as to require the tearing down of portions of the demised

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premises, or such preliminary alterations as will cause serious injuries to the premises, and losses to the owners, in case the proposed improvements shall not be completed. The usual plan of assuring the completion of promised improvements is that of requiring tenants to furnish good and sufficient bonds, executed by themselves and by one or more other responsible persons, conditioned for the faithful performance of the agreements concerning the improvements, and providing for the payment to the owners of all damages which may occur to them through failures of tenants to complete the proposed improvements. The satisfactory working of this plan evidently will depend upon the financial responsibilities of the bondsmen; and, according as there shall be possibilities of injuries to the owners, through the failures of tenants to complete improvements which have been agreed upon, owners must apply with diligence the rules and principles which have already been explained for the determination of personal financial responsibilities.

For the purposes in question, bonds, upon the legal sufficiency of which so much may depend, must be carefully drawn so as to include all necessary covenants and recitals and so as to bind, jointly and severally, all the persons by whom they shall be signed. Ordinarily, it is plain that the greater the number of the signers

of such a bond shall be, the greater will be the chances of responsibility among them.

In all cases in which tenants shall agree to make improvements upon the real estate of their landlords, the clauses in the leases, which provide for the improvements, should specify the exact kinds and natures of the proposed improvements, and should require the full completion of the improvements at as early specified times as will be practicable under the circumstances.

GROUND LEASES.—A form of leasing real estate which appears to be most advantageous to the owners, inasmuch as it exemplifies in a high degree the method of securing rents by improvements, and in other respects which will be apparent without difficulty, is by means of what are commonly known as “ground leases,” the popular name having been derived from the fact that such leases ordinarily apply only to vacant or unimproved land.

A ground lease of real estate gives to the tenant a comparatively long term, and provides that the tenant shall erect upon the land certain specified buildings, at his own cost and expense. The tenant agrees to pay all taxes, assessments, and charges of every description, which are or may be liens upon the premises; to insure the buildings for the benefit of the landlord; to rebuild the buildings in case of destruction, the

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insurance being applied thereto; and to pay to the owner of the land certain rents, specified in amounts and as to the times and manners of payments, and which may be uniform throughout the term, or may increase during certain periods of the term. At the expiration or termination of the lease the improvements may revert, without cost, and free and clear of all incumbrances, to the owners of the land; or the lease may require the owners of the land to purchase the improvements at appraised values, according to the length of the term, the cost of the improvements, and the amount of the rentals.

The terms of ground leases are sometimes very long (ninety-nine years, or even a greater number being not unusual), and sometimes, though more rarely, the terms extend indefinitely—forever—in which cases the leases are said to be perpetual, and the term “fee-leasehold” has been applied to the estates of the tenants. Another form of ground lease is similar to the one which has been described, except that the term is usually much shorter, and the lease contains a provision that at the expiration of the term, the landlord shall have the option of purchasing the improvement at specified or appraised values, or of granting a renewal of the lease for a specified term and at specified or appraised rents.

A ground lease may specify that there shall be several successive extensions (or even for an

indefinite number—forever), with or without an option of purchasing the improvements, and that, at the final expiration or termination of the lease the improvements shall revert to the landlord, or that they shall be purchased by the landlord at appraised values.

With regard to these two methods of acquiring finally the improvements, it is evident that the cost of the improvements, together with the elements of the amounts of rentals, and lengths of terms, will go far in deciding between the two. But where a choice in this respect shall be offered to the owners of real estate, the method by which the improvements will revert to them without cost is to be preferred in all cases where the owners of the real estate may otherwise run the risk of serious embarrassment by being compelled to pay large sums for the improvements, which, under the certainty that they will not be lost by the tenants, may assume far greater proportions than the landlords may have had reasons to expect.

A common provision in ground leases, with regard to the amounts of the annual rents, is that for the first regular term (the term before the first renewal) the rent shall be equal to a clear, net five per cent. upon the value of the particular demised land; that, for the term of each subsequent renewal, it shall be equal to a clear, net five per cent. upon the appraised value of the

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land at the time of such renewal; and that in no case shall the annual rent for the term of a renewal be less than that for the preceding term.

The principal general characteristics of ground leases having been sufficiently explained, their peculiar advantages may be stated as follows:

First, there will be a remarkably perfect security for the rentals; for, with proper care in the drawing of the leases and in the securing of the improvements, a necessary loss of rentals will imply a well-nigh impossible concurrence of such events as the failure of the tenants, the destruction of the buildings, the failure of the insurance companies, and the failure of the land to enhance in values.

Second, investments of this description will have the advantages of permanent and lasting characters, and of the many attendant benefits.

Third, investors in ground leases will experience great relief from the cares and difficulties which are inseparable, generally speaking, from the management of improved real estate. For, with well-arranged ground leases, the necessary tasks of the landlords may be reduced to the simple and precautionary ones of looking up unpaid taxes and assessments and notifying the tenants to pay any arrears; occasionally making inspections of the premises, in order that they may not be allowed to become out of repair; and keeping in mind the dates of expirations of in-

surance policies, in order that they may not lapse or become inoperative.

Fourth, ground leases will provide the advantageous improvement of real estate which, because of lack of means, may otherwise remain unimproved and useless, or pass out of the hands of the owners, or burden the owners with heavy and uncomfortable mortgages.

Fifth, taking into consideration the values of the benefits which have been already mentioned, ground leases will not fail, in the long run, to furnish highly satisfactory pecuniary returns upon the amounts which have been invested.

The nature of this method of leasing real estate being somewhat exceptional, because of the fact that errors or mistakes which may be made cannot be cured in short times by the expirations of the leases, and by the changing of tenants and conditions, but must continue, with all the difficulties which they may provoke, probably during the remaining years of the investors' lives, such transactions should be conducted with extraordinary care, investors realizing fully the fact, that, if satisfactorily consummated, the results will afford ample compensations for the thoughtful care which shall have been bestowed.

Ground leases should contain covenants against nuisances which may be to the effect that the tenants will not erect, maintain, or allow to be erected or maintained, upon the demised premises,

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any slaughter-house, brewery, distillery, stable, forge, foundry, factory, or any other house or building, used or intended to be used for any noxious, noisome, dangerous, or offensive trade or business. In the proper cases, they should contain clauses providing for the valuations or appraisements of the lands and improvements, for the purposes of fixing the rentals for the terms of renewals, and of determining the prices which must be paid for the improvements by the landlords. Such provisions may require the appointment of appraisers of a certain designated class, such as freeholders in the particular neighborhoods; and, in case of failure to agree, the appointment by the appraisers of referees whose decisions shall be final and binding. A ground lease may contain a clause concerning the assignment of the lease, which, if not altogether forbidding assignment, may provide that in case the tenant shall desire to assign the whole or a part of his interest in the lease, he must submit the terms of the proposed assignment to the landlord, and give him the option of assuming the proposed assignment; or the covenant may provide that the tenant shall assign his interest only to such parties as shall be satisfactory to the landlord. The covenant by which the tenant agrees, at all times, to insure the buildings against loss by fire, for the benefit of and in the name of, the landlord, may also provide that, in case of the

partial or complete destruction of the buildings, by fire or otherwise, the tenant shall at once rebuild the same at his own expense, and that any insurance which may be collected by the landlord shall be applied towards the cost of the rebuilding. Other agreements which may be included in ground leases are: one to the effect that the tenants will not allow the premises to become dilapidated or in any way out of repair, and one which shall specify the covenants which must be contained in the renewal leases, which agreement must make provisions for any differences between the original leases and the renewal leases which may be due to changes in the rents, the final purchasing or reverting of the improvements, and the circumstances attending the final expirations of the terms.

As may have been surmised without difficulty, from the preceding statements and suggestions, the advantages of ground leases are not to be derived indiscriminately from all kinds of unimproved real estate. In order to be available for the purposes of ground leases which will include the benefits and advantages which have been mentioned, real estate must possess considerable present values, and, at least in the judgments of the tenants, greater prospective values.

It may be said that the prospective values, or the expected future values, of land are the chief moving causes of ground leases, the theory of the

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tenants being that, by the rapidly advancing values, plainly foreseen by them and unlooked for by the landlords, they will obtain the rich rewards which surely come to those whose fortunate visions are able to extend, with no mistaken gaze, into the seemingly uncertain events of the future.

OCCUPATION OF BUILDINGS.—The uses and purposes to which improved real estate shall be put by the occupying tenants are evidently matters of great importance to the owners of real estate, since the items of rents, expenses, sinking funds, and incomes, in addition to the element of the actual endurance of premises, will vary greatly for different businesses and manners of occupation. With regard to improved real estate which shall be rented exclusively for the purposes of residences and homes, the special efforts of the owners are to be directed towards the obtaining of tenants who, independent of the conditions which go to secure the rentals, shall be, first, in all respects reputable, and second, so circumstanced that such elements as danger of fire, wear and tear, and other injuries to property will be the smallest possible. The danger that premises will be used for purposes of the most disreputable kind is at its greatest with real estate of this kind. And this danger is to be carefully guarded against, because for certain owners of

real estate, the probabilities that their rentals have been earned by the shame and disgrace of their fellow-beings, and that their properties may be the media of such conditions, cannot fail to be abominations; and also because the law very properly makes landlords, to certain extents, responsible for the occupations of their tenants, and often punishes landlords for allowing their premises to be used for unlawful purposes.

The precautions which are to be taken against such occupations are: the careful and intelligent examination of references; the exercising of sound judgment and discretion with regard to the statements and general appearances of proposed tenants, and the including of proper restrictions in the leases; or the insisting upon only short-lived tenancies (such as from month to month) in all cases where there shall be grounds for reasonable doubts.

Concerning real estate which is to be used for the many purposes of trade and business, it must be remarked that the particular uses and the effects of the uses upon the clear returns from the investments will require a very careful consideration.

Special attention should be given to the characters of the securities, and to the agreements which shall be made concerning them; that the securities may be ample to cover all possible difficulties with the public authorities, growing

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out of the legal responsibilities of landlords for the misdeeds of their tenants; and that the agreements may be legally sufficient for the application of the securities to the desired purposes. Especially should landlords provide for their protection against the effects of the statutes relating to the sale of intoxicating liquors called the "Civil Damage Acts," which in some of the States make the owners of real estate responsible for certain damages resulting from the acts of those who shall become intoxicated upon their premises.

Many branches of business are of such characters that the increased danger of fire which is involved will be evident without difficulty. Thus, carpenter shops and all kinds of wood-working establishments, factories which deal largely in explosive or combustible materials, and stores for the selling of fireworks, ammunition, certain kinds of oils, or other inflammable goods, will evidently greatly increase the rates of insurance upon buildings in which they shall be located. Insurance companies classify nearly all branches of business with regard to the risks of fire which they will involve, and the consequent rates of insurance which will be charged. Owners of real estate must, therefore, ascertain the effects upon insurance rates of the uses to which it shall be proposed to put their premises before determining upon the amounts of the rents which

shall be asked; and, for this purpose, the regular insurance agents who are employed by the owners should be consulted in all cases where there shall be doubts, especially in all cases where, because of the large amounts of insurance which will be affected by increased rates, the increase in the cost of the policies will be considerable.

The differences between various kinds of business, with respect to wear and tear, probable damage from other causes, cost of supplying heat, light, power, etc., must come under the careful consideration of owners of real estate. The question of wear and tear, and other injuries to buildings, may be of very great importance; for, in cases where buildings from such causes as weakness or lightness of construction shall be entirely unfitted for heavy and racking businesses, the buildings may be entirely destroyed by collapse; and the owners, in addition to the loss of their buildings, may thus be put to heavy costs for personal and other injuries.

Owners of buildings should know, by consultation with architects, or otherwise, the strains and loads for which their buildings have been designed; and should limit, by provisions in the leases, all tenants to businesses which will be safe in this important respect.

The construction of buildings in such manners that they shall be suitable to the businesses for which they are to be used; or, inversely, the fitting

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of the uses to the characters of the buildings, will to a great extent, remove the difficulties of excessive wear and tear; and the expenses for such items as heat, light, water, etc., are to be arranged for by corresponding adjustments of the rentals. In all cases where proposed tenants shall be, during the negotiations, engaged in the same kinds of business at other places, landlords may be able to form fairly correct estimates of the expenses which must be anticipated from the renting of their premises to the proposed tenants by examinations of the premises which are then occupied by the proposed tenants, and by inquiries of previous landlords and agents. By such means also the special amounts of wear and tear, which are dependent upon the particular manners in which proposed tenants shall conduct their businesses, may be approximated; for it is evident that all persons who shall be engaged in the same kinds of business will not manage their businesses in the same manner with respect to the effects upon the premises which they occupy.

Inquiry may also be made into the details of a particular business, and agreements may be made with the tenants concerning the manner in which the business shall be conducted, with a view to reducing the costs of repairs, insurance, etc. In this manner businesses may sometimes be made satisfactory to the insurance companies, and the wear and tear may be materially les-

sened by the regulation of comparatively unimportant details.

RENT ACCOUNTS.—The consideration of the subject of landlord and tenant, and with it the long discussion of the subject of investments in real estate, may now be brought to a conclusion by the addition of some remarks upon the proper and most convenient methods of keeping account-books of rents and disbursements upon real estate, which may be conveniently termed "rent account-books."

A separate account of the rents which shall be collected, and of the disbursements which shall be made, should be kept for each building, house, apartment, store, or office which is ordinarily intended to be occupied by a single tenant. Thus, for example, in a building which contains twenty-five separate offices, a separate account should be kept for each office, or at least for each portion of the building which shall be leased to a single tenant. Such an arrangement will be most advantageous for the purpose of keeping the details of each investment clearly in view, and also for the purpose of enabling owners to charge all disbursements for repairs, etc., against the exact premises to which they belong.

The separate rent accounts of parts of a building may, each year, or quarter, be carried into a summary for the entire building, and such

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charges as taxes, general repairs to the building, allowance for sinking fund, and such disbursements as cannot be apportioned among the separate parts may be charged in the summary against the entire building. The general benefits of such an account will be evident without further mention; and the special benefits will be the abilities of the owners, at all times, to know the exact conditions of their investments, to observe, almost at a glance, the relative renting qualities of their properties, and to determine from these the methods of managing their present and future real estate investments.

The following pages will illustrate plainly the suggested method of keeping the rent account-book. The pages are intended to represent pages of a rent account-book of an office building, the cost of which is presumed to have been seventy-five thousand dollars for the land, and the same amount for the building, the total cost of the investment being one hundred and fifty thousand dollars.

The various figures have been taken merely for the purpose of convenience, and must not be considered as guides for the proper amounts of rentals and expenditures in such cases.

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Office Building,
No. 2000-2002 Narrow St., New York City.
Store No. 2000, James Jones, Tenant.

Dr.				Cr.			
1890.				1890.			
Jan. 10,	To painting and			Jan. 3,	By Jan. rent .	\$	300
" 30,	decorating....	\$	55	Feb. 4,	" Feb. " .		300
Feb. 25,	To commission..		9	Mar. 5,	" Mar. " .		300
Mar. 30,	" " ..		9	April 2,	" April " .		300
Ap'l 30,	" " ..		9	May 9,	" May " .		300
May 2,	" carpenter's ..		9	June 8,	" June " .		300
" 30,	work.....		5	July 7,	" July " .		300
June 30,	To commission..		9	Aug. 5,	" Aug. " .		300
July 30,	" " ..		9	Sep. 9,	" Sep. " .		300
Aug. 30,	" " ..		9	Oct. 3,	" Oct. " .		300
Sep. 30,	" " ..		9	Nov. 2,	" Nov. " .		300
Oct. 30,	" " ..		9	Dec. 4,	" Dec. " .		300
Nov. 30,	" " ..		9				
Dec. 30,	" " ..		9				
	By balance.....	\$3	432			\$3	600
		\$3	600			\$3	600

Office Building,
No. 2000-2002 Narrow St., New York City.
Store No. 2002, Wm. Black, Tenant.
Jno. White & Co.

Dr.				Cr.			
1890.				1890.			
Jan. 10,	To painting and			Jan. 3,	By Jan. rent..	\$	350
" 30,	decorating....	\$	55	Feb. 5,	" Feb. " .		350
Feb. 25,	To commission..		10	Mar. 8,	" Mar. " .		350
Mar. 15,	" plumbing.....		10	Ap'l 30,	" April " .		350
" 30,	" commission..		15	July 1,	" July " .		350
Ap'l 30,	" " ..		10	(White & Co.)			350
May 30,	" expense of dis-		10	Aug. 2,	By Aug. rent		350
	possessing Wm.			Sep. 3,	" Sep. " .		350
July 30,	Black.....		10	Oct. 3,	" Oct. " .		350
Aug. 30,	To commission..		10	Nov. 2,	" Nov. " .		350
Sep. 30,	" " ..		10	Dec. 3,	" Dec. " .		350
Oct. 30,	" " ..		10				
Nov. 30,	" " ..		10				
Dec. 30,	" " ..		10				
	By balance.....	\$3	315			\$3	500
		\$3	500			\$3	500

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Office Building,
'No. 2000-2002 Narrow St., New York City.
Office No. 1, Clark & Co., Tenants.

Dr.				Cr.			
1890.				1890.			
Jan. 10,	To papering...	\$ 30		Jan. 2,	By Jan. rent....	\$ 50	
" 30,	" commission	1	50	Feb. 4,	" Feb. " ...	50	
Feb. 25,	" " "	1	50	Mar. 2,	" Mar. " ...	50	
Mar. 10,	" gas fixtures	3		Ap'l 2,	" April " ...	50	
" 30,	" commission	1	50	May 3,	" May " ...	50	
Ap'l 30,	" " "	1	50	June 2,	" June " ...	50	
May 30,	" " "	1	50	July 3,	" July " ...	50	
June 30,	" " "	1	50	Aug. 1,	" Aug. " ...	50	
July 30,	" " "	1	50	Sep. 2,	" Sep. " ...	50	
Aug. 30,	" " "	1	50	Oct. 3,	" Oct. " ...	50	
Sep. 30,	" " "	1	50	Nov. 3,	" Nov. " ...	50	
Oct. 30,	" " "	1	50	Dec. 2,	" Dec. " ...	50	
Nov. 30,	" " "	1	50				
Dec. 30,	" " "	1	50				
	By balance....	549					
		\$600					\$600

For the sake of convenience, we may assume that the supposed office building shall contain fifteen offices, and that the annual balance in the case of each office, determined as has been shown above, shall be five hundred and forty-nine dollars.

The annual summary for the entire building, and consequently the yearly indication of the condition of the investment, may now be made out as is illustrated on the following page. If such shall be desired, quarterly instead of yearly summaries may be made in a similar manner, but since the year is the only division of time for which the kinds of expenses will be similar and complete (thus taxes, water rates, etc., are paid annually) the annual summary will be found to be the more satisfactory.

Office Building,
No. 2000-2002 Narrow St., New York City.
Summary for 1890.

Dr.				Cr.			
1890.				1890.			
Jan. 30,	To janitor's wages, \$	50		Dec. 31,	By store \$2,000, bal	\$ 3	432
" "	gas bill.....	5		" "	" " 2,002	3	315
Feb. 28,	janitor's wages,	50		" "	office 1,	"	549
" "	gas bill.....	5		" "	" " 2,	"	549
Mar. 4,	miscellaneous,			" "	" " 3,	"	549
" "	expenses.....	25		" "	" " 4,	"	549
" 30,	To janitor's wages,	50		" "	" " 5,	"	549
" "	gas bill.....	5		" "	" " 6,	"	549
Ap'l 30,	janitor's wages,	50		" "	" " 7,	"	549
" "	gas bill.....	5		" "	" " 8,	"	549
May 10,	miscellaneous..	25		" "	" " 9,	"	549
" 30,	janitor's wages,	50		" "	" " 10,	"	549
" "	gas bill.....	5		" "	" " 11,	"	549
June 30,	janitor's wages,	50		" "	" " 12,	"	549
" "	gas bill.....	5		" "	" " 13,	"	549
July 5,	carpenter work,	15		" "	" " 14,	"	549
" 30,	janitor's wages,	50		" "	" " 15,	"	549
" "	gas bill.....	5					
Aug. 20,	water tax.....	250					
" 30,	janitor's wages,	50					
" "	gas bill.....	5					
Sep. 1,	painting roof...	50					
" 5,	coal.....	350					
" 10,	mason work...	25					
" 30,	janitor's wages,	50					
" "	gas bill.....	5					
Oct. 5,	miscellaneous..	15					
" 30,	janitor's wages,	50					
" "	gas bill.....	5					
Nov. 30,	janitor's wages,	50					
" "	gas bill.....	5					
" "	taxes.....	1 850					
Dec. 30,	janitor's wages,	50					
" "	gas bill.....	5					
" 31,	sinking fund...	1 000					
" "	6% interest on						
" "	\$150,000.....	9 000					
" "	By balance.....	1 717					
		\$14 982				\$14	982

The result of the summary, in the case of the supposed office building, will be a discovery of the fact that, after the payment of all expenses and six per cent. upon the amount of the investment, and proper allowance for the sinking fund, the building has earned a balance or surplus of over seventeen hundred dollars.

CHAPTER X

DESCENT AND DISTRIBUTION OF PROPERTY. WILLS

THERE are few events belonging to the future which generally cause greater anxiety and more arduous consideration among persons of means than the disposition of their property after their deaths.

It is because of the great importance of the subject that the laws of all civilized lands prescribe, with such great care and exactness, the methods by which the property of persons who shall die without making wills shall be divided among their surviving relatives. These laws, which are called the laws of intestate succession, and for the distribution of the estates of intestates, differ considerably in the different States of our country, with regard to the exact provisions which are applicable to the various cases which may arise; and, except for the making of the statement that the real and personal property of intestates will generally be equally divided among their children (children of deceased children receiving the por-

tions which their parents would have taken if they had been living), subject to the widows' dowers and other rights, and subject to certain provisions for surviving husbands, no attempt to explain their provisions need be made here.

It may be remarked, however, that all intelligent persons of property may profitably, by examinations of the statutes of the States in which they live, or by the aid of lawyers, make themselves generally familiar with the laws of their own States governing the descent of real property and the distribution of the personal property of intestates. And it may also be remarked that, if persons of property shall not fail to take the precaution of having their wills made, there will be little actual need of studying the laws which are designed for those who shall meet their deaths without having made wills.

EXPLANATION OF TERMS.—A person who dies without leaving a valid will is called an *intestate*. The real property of an intestate *descends* directly to the *heirs*, and the personal property of an intestate goes to the *administrator* or *administratrix* who is appointed by the court for the purpose of collecting the property and of distributing it, according to the provisions of the statutes, to the *next-of-kin*.

Strictly speaking a *will* is a disposition of *real property*, to take effect after death, and a *testament*

is a similar disposition of *personal property*, the term "last will and testament" covering the disposition of all kinds of property to take effect after death. The popular meaning of the term "last will" is the legal instrument by which the property of a deceased person is given to others, according to the wishes of the deceased, as expressed in the will, the term being thus used to express both the strict will and testament. A *codicil* is a clause which is added to a will, after the execution of the will, for the purpose of changing some of the provisions contained in the will.

A person who has made a will is called a *testator* or (feminine) *testatrix*.

A gift of real property by will is called a *devise*, a testator who makes a gift of real property, is a *devisor*, and a person to whom such a gift is made is a *devisee*.

A *bequest*, or a *legacy*, is a gift of personal property by will, the latter term being commonly used to denote a gift of money or of specific chattels; a person to whom a bequest or a legacy is given is called a *legatee*.

A person who is designated in, and appointed by, a will to administer the estate or to execute the will, of a testator is called an *executor* or *executrix*.

A *trustee* under a will, or a *testamentary trustee*, is a person who is appointed by will to hold some

estate or interest in property for the benefit of another.

A *testamentary guardian*, or a guardian by will is a person who is appointed by will to be the guardian of the person or estate of an infant.

REASONS FOR MAKING WILLS.—The laws of intestate succession, being general in their operation, those of any particular State making in all respects similar provisions for similar conditions of heirs, next-of-kin, and estates, and possessing minuteness of detail to a greater or less degree only in order that no such condition shall be left without ample statutory provision, it may fairly be presumed that the purpose of the laws is not the providing of perfect standards for the descent and distribution of the property of intelligent and provident persons of means, but the furnishing of a convenient means for the disposition of the property of such persons as may come to their deaths without having made use of the better and more comprehensive method of the last will and testament. Indeed, it may be said, more tersely, that these laws exist only for the benefit of the descendants of those who shall neglect the making of wills until it is too late. And, further, it may be said that the very existence of these laws of intestate succession furnishes, to a certain extent, an affirmative answer to the question as to whether owners of property ought to leave

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behind them, at their deaths, last wills and testaments.

A reason for the making of wills, the great importance of which must go without saying, is that, only by means of wills can satisfactory and trusted persons be selected by the owners of property for the management of their estates after their deaths. The fact that the laws generally provide an order in which the relatives of an intestate shall be entitled to the administration of the estate, will in no measure detract from the force of the reason; for such are the possibilities of events which will change the prescribed order that its expected operation will often be set at naught.

Another important reason for the advantage of the making of wills is the fact that the legal requirements with relation to the bonds which must be furnished by administrators may prove to be the source of great trouble and inconvenience to the relatives of deceased persons who have made no wills.

A satisfactory reason why married women who shall be possessed of real estate, and to whom children have been born, should not fail to have their wills made, is that, under the laws relating to estates by courtesy, the husbands of intestate wives who have given birth to living children will be entitled to life estates in all the real property of which their wives may die possessed.

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While there are many cases in which such dispositions of real estate may not be at all objectionable, there are also many cases in which the results of such dispositions will be far from satisfactory; and, in the latter, which probably make up the majority of cases, the only adequate remedy will be the making of properly drawn last wills.

CONDITIONS FOR THE SUCCESS OF WILLS.—A consideration of the entire subject of wills which will prove to be sufficient for the purposes of this volume may be conveniently attained by the investigation of three conditions which may be regarded as essential to the successful operations of wills. These three conditions are: first, that the provisions which are contained in wills shall be, in all respects, sufficient for the purposes of the testators; second, that wills shall be legally valid; and third, that the provisions of wills shall be fully and faithfully carried into effect.

For the fulfilment of the first condition, a careful selection of lawyers for the drawing of wills, and consultations with the lawyers which shall be sufficient to enable them to understand fully the wishes and purposes of their clients, should furnish the general rule of conduct.

The preparation of a complete list of proposed bequests, devises, and provisions, containing the names and other descriptions of all beneficiaries, executors, trustees, and guardians, and

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memoranda of all questions upon which particular advice may be desired, will greatly facilitate the business of making wills. Such a list should be clear and concise, and written in ordinary style, without attempts to use technical terms, leaving for the lawyers the determination of necessary formal and legal terms. The following example of memoranda will serve to illustrate this suggestion:

Memoranda for Will of Mary Jane Doe, wife of John Doe, of Boston, Mass.:

1. To Mary Blake, my old servant, one thousand dollars, as soon as possible after my death.
2. To my husband, John Doe, my residence, No. —, — St., Boston, Mass., with all furniture, books, pictures, works of art, and household goods, for his life, afterwards to my children then living, and to the heirs of any deceased children.
3. To my sister, Alice Roe, wife of Richard Roe, of New York City, ten thousand dollars.
4. To my son, Thomas, the income from twenty-five thousand dollars for life, afterward the twenty-five thousand dollars to go to his children, if any; otherwise to my surviving children, and the heirs of any who may be deceased.
5. To my husband, John Doe, one third of all the rest of my property, for life; afterward to be equally divided among my three children

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Sarah D. Wright, wife of William Wright, of Boston, Mass., Edward H. Doe, and Charles T. Doe, and the children of my deceased daughter, Fannie Carlton, late wife of Peter Carlton, of Philadelphia, Pa., the children of Fannie taking the share which would have been their mother's.

6. All the rest of my property to my three children, Sarah D. Wright, Edward H. Doe, and Charles T. Doe, and to the children of my deceased daughter Fannie Carlton, equally, the grandchildren having the share which would have been their mother's.

7. If any of my three children, Sarah, Edward, and Charles shall die before my death, I wish the property which would have gone to them if living to be given to their children; and, if they shall have no children, to the survivors of my three children mentioned; and to the children of my deceased daughter, Fannie, the share which she would have had if living.

8. My husband, and my three children, Sarah, Edward, and Charles, or the survivors to be my executors and trustees.

Numerous as they may appear to be, it is believed that all of the proper motives and purposes for the making of wills may be included in three general objects, to wit: the protecting against want and suffering of those who have either natural or proper claims to such protection; the providing for the improvement of, or at least for

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the continuance of, the present status of families; and the doing of charity and good works.

The distinguishing of those who have natural claims to one's protection is in general a matter of no great difficulty. Natural affection will quickly and invariably suggest children and children's children, husbands and wives, parents, brothers, and sisters; and if, by reason of improper conduct, any of these shall seem to have forfeited their natural claims, the painful question must finally be answered only by long and conscientious reflection, entirely free from improper prejudice and uncharitableness.

These elements of the problem having been satisfactorily determined, owners of property may next consider some of the common mistakes of judgment which they will assuredly be anxious to avoid in the making of wills.

A mistake which is sometimes made in the disposition of property by will, and which may result in disappointment and hardship to surviving husbands and wives, is the failure properly to realize the effects of the dividing of estates among the various members of families. It may be that, in this manner, a husband will deprive his widow of the means of maintaining the old home which has long since become immeasurably dear to her; or that a wife, by neglecting to calculate the necessary expenses of maintaining her residence during her life, may bring disappoint-

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ment and humiliation upon him who, during her long life, was in all respects a faithful and a loving husband.

On the other hand, the practice of leaving all one's property to the surviving husband or wife for life, afterward to go to the children, is regarded by many as being unjust to the children because it may keep too long from them their birthrights, and also because it may, in certain cases, reflect upon their abilities to manage their affairs independently.

In cases where there shall be ample means for the proper support of all members of the families, the most satisfactory general course seems to be the giving to surviving husbands or wives of property which shall be sufficient to insure the continuance of their accustomed styles of living during the remainders of their lives, the property afterward to be divided among the children, and the dividing of the remaining property equally among the children.

In cases where estates shall not be so ample the better part certainly appears to be, first of all, the protection of husbands and wives during their lives, leaving to the younger and stronger ones the necessity, if need be, of battling for their livings. And the theory upon which such a conclusion is based is evidently the duty and propriety of protecting first those who are least able to protect themselves. This theory should

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find an equal application to all those who shall have natural claims to protection, and who may, from sickness, or from other legitimate causes, be placed in the category of helpless ones. And, with the same theory in view, the end may be best attained by such dispositions of property by will as shall give to those who are least competent, kinds of property, or property placed in investments, which will be the least difficult to manage and to retain. Thus, a son who is a capable and reliable business man may receive bequests of money in cash; an artless daughter who is without experience in the management of property, the income from an investment which is assured for many years to come; and a spendthrift, or improvident child, may be provided only with a stated and limited income for life.

The providing for the future improvement of, or at least for the continuance of, the status of families, may justly be considered a desirable and most commendable object. For the status of a family must signify the conditions of all its members, with regard to the true accomplishments and useful attainments, which, it is true, may not be, but which ought to be, the direct results of independent means.

The effect of the division of the parents' property among several children upon the future status of the family, unless counteracted by other influences, must inevitably tend in the wrong

direction—that is, to lower the status of the family. And in this fact lies the pith of the difficulty, which may be clearly brought out by an assumed case, involving only ordinary elements:

If the competence of parents, equal to half a million of dollars, at the death of the parents shall be divided equally among five children, the competence of each child, unaided from other sources, will be reduced to the amount of one hundred thousand dollars; or, since each child must be presumed ultimately to be the parent of a distinct branch of the family, the status of the entire family will be reduced to one fifth of its original condition. Such a result is to be avoided altogether only by the augmenting of fortunes in equal ratios with the increasing of family numbers, either by the profits and accumulations from industry or from investment, or by the wise and judicious guidance of children, in the selection of husbands and wives, who shall possess corresponding fortunes.

ENTAIL.—From the theory that the status of the family may best be maintained by a concentration of the family property continually upon one branch of the family, and by forever preventing the alienation of the property, have grown the English laws of primogeniture and entail; by which the wealth of the father is intended to pass down the generations always to a single heir

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—if possible, to the eldest son. And, from a contrary theory—that the unfairness of maintaining the wealth of one branch of the family, at the expense of the others, is opposed to the spirit of American institutions—have grown the American laws in actual prohibition of the English methods.

These laws, called the laws *against perpetuity*, exist generally throughout the United States, and are to the effect that the power of alienation of property shall not be suspended for a longer period of time than during any number (or a certain number) of lives in being. In some States this period is limited to two lives in being, and twenty-one years and a fraction thereafter. The practical result of the laws against perpetuities in such cases is that the alienation of property may be prevented for the longest possible period of time by giving it to a child for life, afterward to a grandchild for life, and afterward to a great grandchild absolutely.

Perhaps, with the view of keeping intact large and valuable estates, there is no impropriety in leaving the greater part of an estate to the son or daughter who, by reason of substantial character and ability, shall be most competent to preserve the estate, provided other deserving children shall not be left without proper protection. Indeed, there appears to be a tendency among certain families of great wealth to adopt

such a plan. It has also been suggested that, by providing for the longest lawful suspension of the power of alienation, and by solemn requests and understandings that the proceeding shall be continued from generation to generation, the nearest possible approach to the system of entail may be attained.

CHARITABLE BEQUESTS.—It is to be apprehended that all properly minded persons whom Providence shall have blessed with ample competences will, during their lifetimes, devote certain portions of their incomes to the benefit and relief of their fellow-beings who shall not have been similarly blessed; that is, to the doing of charity and of good works. And no less is it to be apprehended that upright and generous possessors of fortunes will often desire to make provisions for the continuance of their useful and generous acts after they shall have been called away from life in this world.

Property may be given by will to charitable objects in three general manners. First, it may be given directly to the desired objects; second, it may be given to executors or to other persons, with more or less specific directions as to how it shall be distributed; and third, it may be given to executors or to others with directions that it shall be devoted to charitable purposes, but at the discretion and according to the wishes of the

persons who shall be so designated. With regard to these methods, it may be said, in favor of the first, that it is the simplest, and perhaps the least likely to miscarry; in favor of the third, that (presuming the persons who shall be selected for the trusts to be in all respects suitable) it permits of the employment of good judgment and discretion, with regard to individual acts of charity, long after the deaths of the testators, thus avoiding, to a certain extent, the giving of aid to objects which may be at one time deserving and at another time the reverse; and in favor of the second, that it is a mean between the other two. Evidently an objection to the first method will be that the particular objects of charity may, after having received their bequests, become, by fraud or mismanagement, unworthy; and a common objection to the other methods will be the difficulties in the way of selecting persons who may be thoroughly relied upon for the faithful and judicious performance of their trusts.

VALIDITY OF WILLS.—The importance of taking all possible precautions for the validity of wills need scarcely be mentioned, since it is evident that a will which is not valid is, in fact, no will at all; and that a person who shall have no will which is valid will be an intestate.

The first requisite for the validity of wills is that the testamentary capacities of testators shall

be sufficient; or, in other words, that the ages and conditions of testators with respect to sanity, and freedom from duress, fraud, and undue influence shall be such that the law considers them as competent to dispose of their properties by will.

The age at which persons may make valid wills of personal property is not the same in all the States; some States requiring that testators shall be of full age, while others fix the legal age at eighteen (and in some cases even fewer) years; but the common rule with regard to wills of real property is that testators must be of full age.

The general rule with regard to mental capacity is that testators must have, at the times of making their wills, understandings of their business affairs, and recollections of the properties of which they wish to dispose, of the persons to whom they wish to leave their properties, and of the manners in which their properties are to be distributed. These requirements, as well as the requirements with regard to freedom from duress, fraud, and undue influence, are to be best provided for by the selection of, and the free consultation with, lawyers who shall not only be competent for the ordinary purposes of drawing wills, but whose experience, judgment, and carefulness may be relied upon as sufficient for unusual cases.

There are also other statutory provisions, differing in the different States, with regard to

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the execution, witnessing, and attestation of wills, disinheriting of children, provisions for husbands and wives, the rights of married women, taxes on certain kinds of bequests and devises to corporations, etc.—all of which must necessarily be looked after by the lawyers, and which need not receive particular mention here.

The following suggestions, concerning precautions, which are not included in the legal and technical matters relating to wills, and which, if properly followed, will go far towards establishing the validity of wills, will prove to be of benefit to owners of property:

Unusual, strange, or unnatural provisions in wills will often excite suspicions concerning the mental capacities of testators, and may also suggest fraud or undue influence to the courts and juries upon which determinations of the validity of wills may finally depend. Testators may, therefore, wisely abstain from making such provisions whenever possible; and, if they cannot well be avoided, explanations and reasons may be included in wills for the purpose of preventing the injurious suspicions and suggestions which have been mentioned. With the same purpose in view, the reasons for all unusual provisions in wills may be thoroughly explained verbally to the lawyers who shall draw the wills, to the subscribing witnesses who must prove them, and to the persons who shall be named as executors.

It may also be said that testators, instead of delaying the making of their wills until they shall be confined to their beds, perhaps with their last illnesses, should take care that their wills shall be made while they are in good actual and apparent health. Deathbed wills often appear to be suggestive of undue influence or of mental incapacities, from the mere fact that the making of the wills shall have been so carelessly delayed.

Preferably, the subscribing witnesses of wills should be trusted friends of intelligence and position, who shall have no interests in the wills further than that the wishes of the testators shall be carried out, and whose long or intimate acquaintances with the testators will afford them excellent opportunities for judging correctly the testamentary capacities of the testators, and the conditions under which the wills are made. So, if the lawyers who draw wills shall be well acquainted with the general conditions and personal characters of their clients, they may prove to be of the greatest value in establishing the validity of wills.

The lawyers who draw last wills frequently act also as subscribing witnesses; and to this arrangement there is perhaps no objection, provided the characters of the lawyers and their acquaintance with the testators shall be satisfactory; nor is there any apparent advantage

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in the arrangement, unless it be that the education and training of lawyers tend to make them especially suitable for such purposes.

With the view of aiding the establishment of their freedom from restraint and undue influences, persons wishing to have their wills made may go alone to the offices of their lawyers, and may have no third parties present at their interviews until it shall be necessary to furnish witnesses for the attestation of the wills.

The judicious selection of executors will also tend materially to aid the establishment of the validity of wills; for, upon their fidelity, courage and good judgment, may depend the unopposed probating of wills, and the successful and otherwise satisfactory termination of litigations concerning the validity of wills.

Perhaps there is no one proceeding in connection with the disposal of property, which is so peculiarly exposed to litigation, as the proving of wills; and it is doubtful if any other kind of litigation will be able to result so disastrously to the properties which are involved. Indeed, the circumstances which are peculiar to the proving of wills which seek to dispose of considerable properties seem to invite attacks upon the wills by all persons who may think themselves to have been unfairly treated by the provisions of the wills, and by all unscrupulous persons who may perceive opportunities to share in the distribu-

tions of the estates. Those who have been able to accumulate and to protect the properties for the disposal of which the wills are sought to be proved, are no longer to be feared; helpless and inexperienced hands may have the management of the estates; unworthy lawyers may be quick to suggest the easy overthrowing of the wills; executors may be incompetent and indifferent; courts of justice, although sternly enjoined by the spirit of the law to enforce the lawful purposes of wills, appear, in many cases, to be none too jealous of these rights of the dead, and likewise often far too lavish in their allowances out of the estates; and all the allurements of rich properties, apparently without owners and without defenders, seem to beckon from far and near the cowardly and the unscrupulous, whose assaults are directed only against the helpless and against the dead.

In view of these facts, not only the precautions which have been suggested for the final triumphs of wills, and the establishment of validity in spite of all opposition, must be taken, but every reasonable and available precaution must be made use of for the entire prevention of contest or litigation over the probating of wills. And with this object constantly before them, wise persons, when having their wills made, will hesitate long before making extreme provisions which will be almost certain to create disappointment and contention.

EXECUTORS AND GUARDIANS.—The final condition concerning last wills which remains to be considered, is that the provisions which are contained in wills shall be fully and faithfully carried into effect; and this condition, evidently, is to be fulfilled only by the proper selection of the persons who are to act under the wills as executors, trustees, and guardians. The authority of these agents in the management and disposition of property, and their opportunities, either faithfully and exactly to follow out, or, to a great extent, to defeat, the wishes of their departed friends, may not safely be disregarded; for, although the law undertakes to hold them firmly to their solemn duties, its vigilance is, indeed, not always equal to the task.

The law reposes in executors, trustees, and guardians, somewhat of the confidence which, it is to be presumed, was intended by the decedents by whom they have been selected and appointed to their peculiar duties. They usually serve without other security than their own characters and responsibilities, subject to judicial examinations, which are, in the majority of cases, somewhat perfunctory and superficial; they keep their own accounts of receipts and disbursements; and in many ways are often allowed to exercise discretions with which none are able to interfere. The surpassing importance of the proper selection of executors, trustees, and guardians cannot,

therefore, be doubted, and the various means by which this object may be best accomplished may well receive the closest consideration.

Since the general purpose for which the three testamentary officers which have been mentioned are appointed is the same—to wit, the carrying into effect of the wishes of the deceased persons—the principles upon which their selection should depend may be considered together, after first having pointed out the special points of difference and the special precautions which, accordingly, will be necessary.

The duties of a simple executor include, briefly, the collection of the assets belonging to the estate, the payment of the lawful debts of the decedent, the payment of the bequests which are provided for in the will, and the final accounting before the proper judicial officers. These duties cease with the final accounting and discharge of an executor, and may extend over only short periods of time. But trustees and guardians have larger duties to perform—duties which may extend through periods of many years, or even during entire lifetimes. Greater care ought, therefore, be given to the choice of these latter officers, in proportion as their duties and responsibilities shall be of greater importance and of longer durations.

Evidently, in the greater number of cases, the proper and most natural guardian of children

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will be the surviving parent where such exists; and if there shall be no living parent, the order of desirability, other things being equal, appears to be: grandparents, elder brothers and sisters, uncles and aunts of the blood, etc.; the nearest relative who shall possess the necessary qualities.

If it shall be necessary to look outside of the list of relatives for the guardians of children, a useful rule appears to be that the required characteristics are most likely to be found among middle-aged persons of means who have been deprived of their own children.

The law, recognizing the fact that the qualities which are required for the management of property and for the training of children may be widely different, often allows the appointment of two guardians for the same child—the one a guardian of the estate, and the other a guardian of the person. In some cases, such an arrangement will prove to be the more satisfactory; but the better general rule seems to be to approximate, as closely as possible, to the relation of actual parent and child, by uniting in the same person all the duties and responsibilities of guardian.

The laws of the different States, in relation to the appointment of testamentary guardians, are not in all respects uniform; a common rule, however, is that the appointment belongs to the father, and to the mother if the father shall not be living. In all cases where the appointment

of testamentary guardians shall be desired, the effect of special statutes must be determined by the lawyers who are to draw the wills.

With regard, now, to the selection of executors (and, as far as is not inconsistent with the special suggestions which have been made, the discussion will apply to the selection of guardians and trustees), the following principles and methods may be mentioned and considered.

First, regarding the matter strictly and only as a business arrangement, executors may be selected from among persons who, or institutions which, will furnish adequate security for the proper performance of the required duties; second, regarding executorship as a solemn and sacred duty, springing from the relations of kinship, or of intimate and confidential friendship, executors may be chosen from the lists of sterling friends and relatives, whose integrity, fidelity, and ability may safely be trusted, even to this superlative extent. Unfortunately, there is not always an opportunity to choose between these two principles and methods. When the fact that services, which are to be performed in strictly business arrangements, must be paid for at rates which shall be satisfactory to those who are to perform the services shall be taken into consideration, it will be evident that only estates of considerable magnitudes will be able to furnish the compensations which will usually be necessary for the

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employment of the first method. And from this statement it follows, as a general proposition, that only persons who shall be possessed of considerable amounts of property will be able to enjoy the full advantages of choosing between the methods which have been mentioned. Persons who have not been blessed with considerable properties, must necessarily be confined, in their choices of executors, to those among their relatives and friends who shall be willing to render the required services, without regard to compensation, for friendship's sake.

In special cases, however, where the numbers of devisees or legatees, or the numbers of the principal beneficiaries under last wills, shall not be large, the principles of the first-mentioned method may be applied effectively, and without regard to the magnitudes of estates, by appointing as executors all those who shall have direct interests in, or those having the principal interests in, the wills.

It will not be denied that there are many persons whose financial conditions and characters are such as to furnish satisfactory assurances that any duties which they may assume will be faithfully performed. If such persons, who shall be willing to act in the capacities of executors, cannot be found, and if the first-mentioned method of selecting executors shall have been decided upon, the persons who shall be selected

may be required to furnish securities in the form of bonds for the faithful performance of their duties; or well-known and high-standing trust companies may be appointed to the duties of executors.

Concerning the second method of selecting executors, it may be said that, if the characters of the persons who shall be chosen shall reach the high standard which must be required, the duties of their offices will, indeed, be performed in ideal manners; for, where abilities are adequate, the highest type of the performance of duties must be that which is actuated by the affections of conscientious persons.

A common practice, especially in cases of complicated and difficult characters, is the appointing of lawyers, who are considered to be entirely trustworthy as executors. With regard to the practice, it must be said that lawyers of ability may be presumed to be competent for the work of executors, and that otherwise no distinction can be properly made in their favor. Indeed, if it shall become necessary to decide definitely, in favor of or against this practice, the safer plan in the majority of cases appears to be to avoid the practice, unless there shall be exceptional conditions in favor of particular lawyers.

For purposes of comparison between the two general methods of selecting executors which

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have been considered, the advantages of, and the objections to, both methods may be briefly stated.

The principal advantage of the first method evidently will be the security which it should afford, and the principal objections to the method will be a lack of special interest on the parts of the executors (which will lead to perfunctory performances of duties, in many cases by means of clerks and assistants) and the limit of application of the method which has already been mentioned. As has been suggested, the great advantage of the second method will be the earnest and devoted performance of duties which it should secure, and the corresponding objection must be the difficulties in the selecting of persons who shall possess the required qualities.

The appointing, as executors, of all persons who shall have considerable interest in wills, or of all the principal beneficiaries under wills, seems, without doubt, to be the best method which can be suggested for the special cases in which its employment will be practicable.

With regard to the most advantageous number of executors to be appointed for the purposes of a single last will and testament, it should evidently be in proportion to the duties which are to be performed. But, since executors may employ reasonable numbers of necessary assistants for clerical work, there are perhaps few

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cases in which the duties may not be performed by a single competent executor. In favor of a single executor it may be also said that the duties of the office may be more systematically performed than where they are distributed indiscriminately among several. On the other hand, much may be said in favor of the selection of several executors for a single will. The possibility of complications which may result from the death of a sole executor will be practically removed; and where there shall be several executors, each, in a measure, will or should act as a check upon the others. The expenses of administering estates should not be materially affected by the number of the executors, since ordinarily the commissions are the same whether there shall be one executor or several.

The better general rule appears to be that several executors shall be chosen, with directions that, in case of the death of either or any of them, the duties shall devolve upon the survivor or survivors. In cases where single executors shall be desired, others may be appointed to act only in case of the deaths of the first-named executors.

The destruction of a will, as by burning or tearing, with intent on the part of the testator to destroy it, of course acts as a revocation. So a will is ordinarily revoked by the making and execution of a subsequent one; and the destruction of a subsequent will does not always act

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to revive a former one. According to the various laws of the different States, a will may be also revoked, in some cases, by the marriage of the testator or testatrix, and in others, by the marriage of the testator or testatrix and the birth of a child.

SUCCESSION TAXES.—In most, if not all the States, a tax is imposed upon the estates of decedents, whether testate or intestate, varying materially in the different States, and subject more or less to changes by amendment and revision of the laws.

This tax is variously called a *succession tax*, *legacy tax*, *inheritance tax*, or *transfer tax*; it is generally due in any particular case at the time of death of the decedent, and is governed by the laws which are in force at that time.

The laws of the different States quite generally exempt from the operation of this tax personal property to certain amounts, prescribed by the statutes, and real property which is devised, or descends to father, mother, husband, or wife, children, brothers, and sisters. The tax, therefore, is sometimes called a *collateral inheritance tax*. The amount or percentage of the tax may also vary with the relationship between the decedent and the beneficiaries. A succession tax upon a particular legacy is generally payable out of the legacy itself and the executor or adminis-

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trator is required to deduct the amount of the tax, before paying the legacy to the beneficiary.

Upon receiving letters testamentary, the executor (or upon receiving letters of administration, the administrator) must apply to the surrogate, or proper probate officer for the appointment of appraisers to determine the amount of the tax. Since proceedings of this kind are usually technical and complicated, and since often penalties are charged against estates if these taxes are not paid within prescribed times, executors and administrators may advantageously consult with their lawyers concerning the matters, without delay.

In order that provisions in wills may be more intelligently made, the lawyers drawing the wills may be consulted with reference to the effects of succession taxes upon the estates for the disposition of which the wills are to be made.

CHAPTER XI

GUARDIANS, EXECUTORS, AND ADMINISTRATORS

A CONSIDERABLE portion of the preceding chapter has been devoted to the consideration of the offices of guardians and executors, from the standpoints of testators. The duties and responsibilities of these offices remain to be considered from the standpoints of those who have been or who may be called upon to occupy such positions.

To conscientious lovers of children, who shall have also moderate business abilities, the duties of guardians will not prove to be extraordinarily difficult. While such duties should not be assumed without careful and adequate consideration of all the possibilities which may be involved in particular cases; neither should they be shirked by those who shall be competent. The avoiding of the duties of guardians by those who ought to assume them may be the means of placing them in the hands of far less capable and conscientious persons.

DUTIES OF GUARDIANS.—After having com-

plied with the preliminary requirements of the law, the first duties of the guardian of the person and estate of an infant will be to receive the person and the estate of the infant from the hands of the executors or others who may have the temporary custody, and to make a careful and complete inventory and account of the property of the ward.

The regular and continuing duties of guardians will be the management of the estates of their wards (of which complete accounts must always be kept, charging the estates with all necessary and lawful expenditures and crediting them with all incomes, increases, and profits), and the maintenance, training, and education of the wards.

For the proper management of the estates of wards, the precautions principles which have been expounded in this work, when supplemented by the suggestions which will follow in this place, should be entirely sufficient. Perhaps, in the majority of cases, it may be said that the duties of guardians, with respect to the estates of their wards, will have been satisfactorily performed if, at the terminations of their offices, their wards shall have been properly provided for and educated without any depreciation of the values of their estates; or, in other words, if the estates shall have been so managed that the incomes will have been sufficient for the proper support and education of the wards.

But, evidently, this proposition must be qualified in accordance to the magnitudes of the estates of wards. If the estate of a ward shall be so small that it cannot possibly furnish an income which will be sufficient for the support and education of the ward, the principal of the estate must, under the permission of the courts, necessarily be used; and the ward must be prepared, as wisely and as speedily as is possible, for the necessity of self-support.

If, on the contrary, the estate of a ward shall be much larger than is necessary for the furnishing of a sufficient income, the duties of the guardian, with respect to the management of the estate, will be fulfilled only by the securing of a proper and corresponding increase in the principal of the estate.

The office of guardian is a strictly fiduciary one, and guardians are entitled to no profits or benefits, except the compensations which are allowed by, and specified by, the laws, from the estates of their wards. Therefore all profits and increases must be credited to the estates of the wards, and must also be strictly accounted for by the guardians.

The maintenance, training, and education of wards must be in accordance with their prospective social and financial positions. Thus, wards of ample wealth and belonging to families of high social standing will be entitled to the proper luxuries of maintenance and of education;

while those who will be compelled to earn their livings by their own efforts must be trained in frugality and industry, and educated in the directions which will be necessary for their self-support. But, in all cases, it cannot be doubted that wards should be thoroughly inculcated with the knowledge and appreciation of the true value of property, and of the rightful purposes and employments for which it is chiefly to be prized.

Guardians who are appointed by the courts are usually required to render annual, or other periodical accounts of the conditions of the estates which have been placed in their hands; and all guardians who shall have charge of the properties of wards will be required to render final accounts of the conditions of the estates before they can be legally discharged from their duties. The necessity that guardians shall keep complete accounts of all receipts and disbursements which are connected with the estates of their wards, and that they shall obtain and preserve receipts or vouchers for all expenditures, will therefore be at once evident.

DUTIES OF EXECUTORS AND ADMINISTRATORS.—Many persons, who are entirely unacquainted with the duties of executors and administrators find themselves placed in positions of quandary and embarrassment by the death of relatives or friends, who have selected them for the duties

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of executors, under the provisions of last wills and testaments, or by the dying intestate of relatives for whose estates they must act as administrators. For the benefit and instruction of such persons, the principal regular duties of executors and administrators will be explained, with such suggestions as may appear to be necessary for their assistance in the premises.

Before entering upon the discussion of the duties of executors and administrators, however, it will be well to call attention to the fact that executors and administrators have charge of the personal property only of decedents, the title to real property passing directly to the heirs or devisees, unless, by special provisions in their wills, decedents shall direct otherwise.

The chief point of difference between executors and administrators is that the former act by virtue of appointments to certain duties which are contained in last wills and testaments; and the latter act by virtue of appointments to similar duties, in cases of intestacy, by courts having charge of probate matters. The order in which the relatives of intestates are entitled to appointment as administrators is generally prescribed by the laws of the States in which intestates shall have lived or died. Generally speaking, surviving husbands or wives of decedents are preferred, and after them the order of the next-of-kin is substantially followed, pro-

vided the order shall not be disturbed by renunciation, or disqualification on account of insanity or other legal incapacity.

The first duty of an executor, or of a person who shall be entitled to act as an administrator will be to attend to the burial of the decedent; and this should be done in a manner which is in keeping with the estate of the decedent, or in accordance with the instructions which may be contained in the will. Next in order of the duties of an executor, will be the proving of the decedent's will, and the obtaining of letters testamentary; and the corresponding duty of a person who shall be entitled to the administration of the estate of an intestate will be to obtain from the proper court letters of administration.

These duties will always involve technical, legal proceedings; the services of competent lawyers, for the purpose of obtaining letters testamentary and letters of administration, cannot, therefore, be properly dispensed with. The practical statement of the duty which is in question will therefore be that an executor named in a will, or a person who is entitled to the administration of an intestate's estate, should, at the first opportunity, give the necessary information and instruction to a reputable and competent lawyer.

Letters testamentary and letters of administration are issued out of the courts having juris-

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diction over probate matters, and constitute the legal authority by which executors and administrators respectively are entitled to the possession of the estates of decedents. Until these letters shall have been regularly obtained, therefore, an executor who is named in a will, or a person who is entitled to the administration of an estate, will have no strict right to the custody of, or interference with, the estates or affairs of the deceased. In case there shall be danger of theft or loss of property belonging to the estate of a decedent, however, the executor named in the will, or the person who is entitled to the administration, may safely assume the responsibility of taking possession of such property for purposes of preservation.

A wise precaution, in all such cases, will be the providing of responsible witnesses as to all properties which shall be taken possession of in this manner.

With the obtaining of letters testamentary or of letters of administration, the distinctions in the general duties of executors and administrators will practically cease, with the exception that the former must distribute the estates for which they are executors according to the directions which are contained in the last wills and testaments, and the latter must perform these duties according to the laws for the distribution of the property of intestates. The consideration of

the duties of executors which follows, will apply, therefore, equally to those of administrators.

Perhaps the most important duty of executors, as well as the one which will, in many cases, afford the greatest difficulties, will be the collection of the assets belonging to the estates of the decedents.

All articles of personal property which may be lost or stolen (such as money, bonds, stocks, clothing, jewelry, books, pictures, etc.) should be secured and placed in safe keeping; for executors will be personally liable for any losses to the estates of which they have charge which shall be due to their carelessness or improper conduct.

All bank-books, account-books, letters, memorandum books, and documents of every description belonging to the estates, should at once be taken possession of by the executors; and these, at the earliest opportunities, should be subjected to careful examination for the purpose of discovering and of locating any property which may otherwise escape the notice of the executors.

All personal property must be taken into the actual custody of the executors at the earliest possible opportunities, and if possession cannot be acquired by ordinary and peaceable means it will be the duty of executors to take the necessary legal proceedings without hesitation or delay. Not only the law requires executors to exercise all reasonable diligence in the collection

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of assets, and holds them to strict account; but conscience and moral duty require that every article of value—every cent—which of right belongs to the estates which they are administering, shall be obtained for the benefit of those who are to share in the distributions. The principle upon which the duties which are now under consideration depends is, evidently, that the largest possible and lawful amounts of property are to be collected. The sound judgment of executors must, however, be exercised to prevent the useless wasting of assets in vain attempts to recover property which shall be of little or no value, or the recovery of which shall be extremely improbable.

Executors are generally required by law to make and file inventories of all assets which have come into their hands or of which they shall have knowledge. Such inventories must contain descriptions and valuations of all articles of personal property, of debts which may be due to the estates of the decedents, and of all other assets which can be discovered. The laws of the different States provide for the manners and times in which inventories of this kind shall be made and filed, and also for the selection of appraisers for the purposes of the valuations. Such matters, as also all other matters which shall depend upon the special statutes of the States in which executors shall act, must be determined by consulta-

tions with the lawyers having charge of the legal affairs of the executors.

The powers of executors are in general very broad; the fundamental principle being that, subject only to special provisions, which shall be contained in the wills, they stand in the places of the decedents whom they represent. Executors may, therefore, sue and be sued in their representative capacities; they may, in good faith, compromise claims and subject disputed matters to arbitration; they may sell and even mortgage the assets belonging to the estates; they may indorse notes which are payable to the orders of the decedents, and bind the estates of the decedents by completing the unfinished contracts of the decedents, and by the employment of the necessary attorneys and agents. But, in the exercise of these extensive powers, executors may well proceed with prudence and with caution, seeking reasonable aid whenever such shall be necessary; since, in addition to the fact that such a manner of proceeding will be included among their moral duties toward the estates of which they have the management, they will be made personally liable for the results of all acts which may savor of fraud, collusion, or gross carelessness.

Executors are bound to ascertain all legal debts or liabilities of the decedents, and to pay and discharge them when the amounts of assets shall be sufficient. And for these purposes the laws

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commonly provide methods of advertising for claims against the estates, and specify the times of payment of claims, and the order of priority in the payment of certain kinds of debts. These are evidently matters to be determined by the lawyers, and are also matters which must not be disregarded, lest, by improper payments, executors may be compelled to sustain the losses themselves.

All assets belonging to the estates of decedents having been collected, and the debts of the decedents having been regularly discharged, according to the requirements of the laws, executors must pay the bequests and legacies which are provided for by the wills, and must otherwise carry out the directions which are contained in the wills; taking care, however, that no payments of legacies shall be made until the times which may be provided by the laws for such payments, that legacies shall be paid to the persons who are entitled to receive them, and that, in all cases, receipts for the payments, stating the amounts (or specific articles) which have been paid, and the purposes for which they have been paid, shall be required.

Sometimes wills may contain complicated or ambiguous provisions and directions which will result in difficulties and embarrassments for the executors. In all such cases, executors must seek competent legal advice, and, if necessary, the aid

of the courts for the definite construction of embarrassing provisions and for instructions concerning the duties of the executors must be invoked. With assistance of such a character, the administering of estates will generally prove not to be beyond the abilities of ordinary persons.

With regard to the general rule for the proper administration by executors of the estates of decedents, it may be said that the law requires them to act with perfect good faith, and with such skill, prudence, and diligence as men ordinarily bestow upon their own affairs.

The final duty of executors is the rendering of complete accounts of all transactions which they shall have had concerning the estates which they have administered. The final accounting and the discharge of executors from their duties and liabilities which follows, usually by orders of the probate courts, terminate the direct relations of executors with the estates of the decedents.

The final accounting and the discharge of guardians take place when their wards shall have reached the ages at which they shall be entitled by law to the custody of their own properties, and when the duties of the guardians shall have been completed.

CHAPTER XII

MISCELLANEOUS

MARRIED WOMEN.—The legal disabilities of married women were formerly almost complete. They were regarded as incapable of managing their own affairs, and their very personalities were regarded as being merged in the personalities of their husbands. The property of a woman became, upon her marriage, the property of her husband; whatever sums she might earn during marriage, belonged to her husband; she could no longer make legal contracts; and her husband was liable for her torts. But in the United States gradually these disabilities have been done away with, until married women now find themselves almost without special disabilities.

The theory of the merged personalities—that husband and wife are one person, represented entirely by the husband—has so far disappeared in the United States that married women may now commonly make legal contracts, not only with others, but even with their husbands.

A husband, as the head of the family, confers the family name and selects and fixes the family domicile. He is bound to support his wife in a manner suitable to his circumstances and the law compels him to provide for her out of his estate after his death, the rule being that the wife takes a life interest in one-third of his real property (dower) and a portion of his personal property varying in different States, and according to other conditions, such as number of children, husbands' parents, etc. A wife is bound to render proper family services and her husband is entitled to her society and cohabitation.

The laws of the different States concerning the rights, powers, and disabilities of married women are far from uniform. When it shall be necessary for married women to ascertain their exact status in the law, they must have recourse to the statutes of the particular States in which they reside, or in which their real property is located.

These statutes, called generally "married women's acts" are subject to such frequent changes that it is not considered advisable to give even a summary of them here. The general tendency of the married women's acts is to remove more and more the disabilities imposed by the common law, and doubtless the time is not far distant when married women will find themselves freed from all special disabilities and authorized in

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all respects to act concerning their property as if single.

The following general statements will prove of service in cases where a more precise knowledge may not be necessary :

In most of the States a married woman has her right of dower, of which her husband cannot deprive her, without her consent, and likewise in many of the States the husband's right of courtesy is established.

The property of a married woman acquired before or after marriage (sometimes with the exception of property acquired after marriage from her husband) is generally her separate property, free from the debts or control of her husband. In some of the States, however, provisions are made in the statutes for common or community property between husbands and wives.

In many of the States a married woman may convey her real property without the consent of her husband, as if single, though in some States she has not this authority unless abandoned by her husband, and in others, the husband is required to join with her in the execution of deeds concerning her real property. So generally a married woman of legal age may dispose of her separate property by will, without the consent of her husband, although in some of the States, she cannot deprive her husband of his right of courtesy, without his consent.

A married woman may generally (at least with respect to her separate property) make contracts, as if unmarried, though in some of the States she is not authorized to contract with her husband, or to become surety, or accommodation endorser.

So generally she may sue and be sued alone as if single, with reference to her contracts and touching her separate estate.

In many of the States a married woman may engage in trade or business on her own account, and has then all the rights and liabilities of tradesmen and business men generally. In some of the States she is not authorized to transact business on her own account, without the consent of the court.

When property has been paid for by a married woman's money, and the title to the property has been taken in her husband's name, without her consent, the property is generally regarded as a part of her separate estate, and the husband is accountable to her as trustee of the property. But where a husband has paid for property with his own money, and has taken title to the property in his wife's name, the law generally presumes that the property has been purchased for the benefit of the wife, and the burden of proof is put upon the husband to show that he intended to establish a trust for his own benefit.

Although a husband is entitled generally to the services of his wife, the savings and increases

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from her separate estate, even though she may devote considerable time to the management of it, will generally be considered a part of her separate estate, and the husband will have no legal interest in the increase. So also the earnings from the personal services of a married woman (except in her husband's household and with certain other limitations), and the proceeds of her separate trade or business, in many of the States, are declared to be parts of her separate estate and free from the control of her husband.

In some of the States a married woman must support her husband, if he is unable to support himself, and in other States she is liable for family necessities and the support of her children.

Concerning the distribution of a married woman's estate upon her death, without leaving a will, the rule is that her property is divided between her husband and children (if any) in certain proportions varying considerably in the different States, and that, if she leaves no children (and in some of the States no kin) the husband takes all her property.

A married woman, and not her husband, is liable in law for her torts and crimes committed without the consent of her husband.

DIVORCE.—There are two general kinds of divorce, *a vinculo matrimonii* (from the bonds of matrimony), or an absolute divorce, and *a menso*

et thoro (from board and bed), or a legal separation, of husband and wife. Adultery (either a single offence or living in adultery) is a uniform, and in some of the States, the only ground for absolute divorce.

Desertion, failure to support, cruelty, habitual drunkenness, and imprisonment for felony are various grounds, in some States for absolute divorce, and in others for legal separation.

There are also statutes providing for the legal annulment of marriages upon the general ground that they have been illegally contracted, because one of the parties has not reached the legal age of consent; a former marriage was still in force; one of the parties was insane; the consent of one of the parties was obtained by fraud or force; or that one of the parties was physically incapable of entering the marriage relation.

It frequently happens that women of means are united by marriage to husbands who have little or no property of their own. Without considering the proprieties of such unions, it may be said that, if husbands shall be possessed of proper manly spirits, such circumstances will be, to a certain extent, constant humiliations to them, and wives may very wisely do all reasonable things which may be in their abilities, to relieve their husbands of such disagreeable sensations. To this end wives may avoid all unnecessary public reference (even among their closest friends) to their own

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properties and means; and, while they should carefully maintain the titles to their properties (or in other words their principals) in their own names, they may allow their husbands to receive their incomes, to keep their bank accounts, and to pay the household bills with their (the husbands') own checks. By so doing, wives will in no degree demean or humiliate themselves; they will place no more confidence in their husbands than they are often obliged to place in their lawyers or their agents; and they will place their husbands, before the world, in the positions which they are universally expected to occupy.

Whether or not wives should permit their husbands to take charge of their principals, and to manage their investments, will evidently depend upon the relative abilities of husbands and wives in particular cases.

LIFE INSURANCE.—Life insurance may be defined as a contract by which the life insurance company, for a certain consideration, agrees to pay, at a specified time, or at the death of the person insured, a certain amount of money, to beneficiaries, named in the contract.

The written or printed contract is called the *policy*; the life insurance company the *insurer*; the person at whose death the amount of the policy is to be paid, the *insured*; the amount paid as the consideration for the contract, the

premium; and the person to whom the amount of the policy is to be paid, the *beneficiary*.

Premiums are generally paid in annual, semi-annual, or quarterly instalments during the lives of the insured. The question whether a life-insurance company shall gain or lose by a particular insurance, therefore, depends entirely upon how long the insured shall live to pay the instalments of premium. After long and careful investigation and experience the life-insurance companies have established rules and tables by means of which they are able to calculate the probable lengths of lives for certain conditions of age, health, occupation, etc. The condition of health is determined by physical examinations of applicants by the examining physicians of the companies, and the remaining conditions are determined by the statements (called *representations* or *warranties*) of the applicants. Any fraud, or concealment, in the representations, made by the insured voids or forfeits the policy, and a default in the payment of instalments of premium, or other agreements to be performed by the insured, in general, forfeits or causes the policy to *lapse*, though the life-insurance companies commonly allow certain *days of grace* (with certain penalties), and make provisions for reinstatement (upon paying charges, interest, etc.) after policies have been forfeited.

There are also many provisions, which may

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be included in life-insurance policies (such as non-liability in case of suicide; authority to change beneficiaries; participation in the distribution of surpluses; restrictions upon travel, residence, or hazardous occupations; incontestability of policies after a certain number of years; provisions for loans upon policies and surrender values, etc.) which need not be further referred to here. The premium of a life-insurance policy may be made payable in one payment, in which case (as also any policy upon which all the required payments have been made) the policy is called a *paid-up* policy.

Premiums may also be made payable, in terms, for a certain number of years or in a certain number of payments (instead of, in terms, during the entire life of the insured). Such premiums are called *limited payment policies*—twenty-payment policies, thirty-payment policies, etc.

An *endowment* policy is one in which the amount which is to be paid at the death of the insured is also made payable at the expiration of a certain number of years, though the insured be living at that time.

The general plan of insurance may be described as follows: a person upon whose earnings the maintenance of others depends, in order to render the dependent ones safe against poverty in the event of his (or her) death, or (in the case of an endowment policy) incapacity from age, insures

his (or her) life, and in case of the death of the insured, the beneficiaries are paid by the life-insurance company the amount of the policy—it may be an amount much larger than the insured could provide in any other manner.

It is to be presumed that the life-insurance companies, in average cases, make profits out of the transactions, and therefore, in average cases, economy and proper management will enable a person to accumulate a greater amount of property, in a lifetime, than the amounts paid by the life-insurance company. But obviously this can only be true in cases where persons shall live as long or longer than the probable lengths of lives as calculated by the mortality tables of the life-insurance companies. Since we cannot be certain of living so long and assuredly ought not be willing to take the chances, the plan of life insurance is to be recommended in all proper cases.

With regard to the selection of a life-insurance company, the simple rule should be to insure only in well known, large and high standing companies; never, under any circumstances, in small companies, or in any of the beneficial associations or corporations claiming to act as better substitutes.

The briefest examination of the subject of life insurance, by means of the rules of investment which have been laid down, will show that life

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insurance is not to be considered at all as a means of investment; although it will be admitted that the method of endowment insurance may be of benefit to persons who are improvident and incompetent in the investment and preservation of property.

Life insurance, indeed, is not intended as a means of investment; but as a security and protection against the unfortunate events of an uncertain future.

Scarcely an institution can be named, which has been of greater benefit, in its proper field, than life insurance. It is therefore fairly entitled to our strongest recommendation and encouragement.

LIFE ANNUITIES.—Under certain conditions of age, physical or other incapacity, and smallness of principal, it sometimes becomes necessary to discover some method of obtaining, even at eventual sacrifices, larger relative incomes than may be obtained by means of any of the regular methods of investment.

If we suppose the case of an aged woman whose entire principal has become reduced to a few thousand dollars, and who is entirely dependent upon it for support, it will be at once evident that, unless by some means the regular annual income from this small principal, during the few remaining years of her life, may be increased to much

more than the ordinary income of about five per cent., the woman will be compelled to consume regularly each year a portion of her principal. If a means of determining definitely, and without the possibility of mistake, the remaining years of the supposed woman's life could be discovered, there would be little difficulty in computing the annual allowance, out of the principal, which may be expended in her support, without resulting in the final entire loss of her means of support. But such a means of definitely determining, in advance, the events of the future cannot possibly be obtained; and the woman of the supposed case (unless the method which will be explained shall be employed) will therefore be compelled, during the last painful years of her life, to live in bitter poverty and economy, looking forward with dread and apprehension lest her small means shall be entirely expended before her death.

For cases similar to the one which has been supposed, the method of life annuities furnishes at once an adequate remedy and a substantial relief, notwithstanding the fact that it will be open to serious theoretical objections, if it shall be considered in the light of a regular means of investment.

The principles of the method of life annuities may be explained in the following manner:

Life-insurance companies commonly make a practice of receiving certain sums of money from

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their patrons, with agreements to the effect that the companies shall pay (annually, semi-annually, or quarterly) to the annuitants, during their lives, specified sums of money, and that, at the deaths of the annuitants, the amounts which they have paid to the companies shall become the absolute property of the companies. The amounts of annuities are determined from the amounts which shall be paid to the companies, and from the numbers of years which (according to the established tables of longevity) the annuitants shall have yet to live. In consideration of the fact that the companies finally obtain absolutely the principals from which are derived the annuities, the companies are able to pay larger percentages upon the principals than may be obtained in any other practical manner.

An application of the general rules of investment to the principles of life annuities will show at once that life annuities will not fulfil, to the satisfaction of investors, the necessary requirements of good investments; moreover, it is to be apprehended that few investors will consent to the sacrificing of principals, and the consequent disadvantage to heirs and descendants which the system necessarily requires. For urgent cases, such as have been suggested, there appears to be no satisfactory alternative, and the method of life annuities is therefore to be recommended.

So great appears to be the public confidence in

the responsibility of the large and prosperous life-insurance companies that certain persons of large means are commonly stated to have made use of the system of life annuities for the purposes of direct investment, probably with a view to the avoiding of the trouble and difficulties which generally attend the ordinary methods of investment.

When, because of the necessity which should properly constitute the reason for the purchasing of life annuities, or because of the wishes of investors it shall be decided to make use of the system of life annuities, the one necessary suggestion, with regard to precaution, will be that none but companies of the highest reputations and the greatest amounts of capitals and surpluses shall be dealt with.

The process of purchasing a life annuity is usually very simple. The proposed annuitant has but to select the company in which to purchase the annuity; satisfy the officers of her age (no physical examination being required); pay the amount of the purchase price; and receive her annuity policy or agreement, stating the amount of the annuity and the times of payment.

Annuity rates, or percentages of annuities, change frequently as the regular rates of interest and returns from investments decrease, the amounts paid to annuitants for certain premiums and ages becoming less with each successive

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change. The life-insurance companies publish tables of life annuity rates, which may be obtained upon request from any life-insurance agent, or company, whenever it is necessary to consider the subject particularly.

SIGNING PAPERS.—Warnings against the careless and indiscriminate signing of papers and documents have long ago become so common that an unreasonable tendency towards timidity in this respect may often be noticed among inexperienced women.

Very numerous have been the stories concerning women who of right should be in comfortable circumstances, but who, by the thoughtless and unintelligent signing of documents, have "signed away" their properties without proper compensation, and have thus rendered themselves poor.

Undoubtedly such stories are, in the majority of cases, greatly exaggerated; for, in a general way, it may be said that the law will not allow persons to be defrauded of their properties simply by the ignorant signing of certain legal instruments. If promptly invoked, the principles of equity will relieve such persons from the consequences of their mistakes in all cases where substantial justice shall require such relief. It follows that, in the majority of cases, where property rights have been fraudulently obtained

by means of the careless signing of papers, the losses have been due as much to negligence in bringing the necessary legal proceedings for the righting of the wrongs as to the signing of the papers.

Nevertheless, the thoughtless signing of papers cannot be too strongly condemned. There are numerous cases in which, because of the rights and interests of third parties who have acted in good faith, the laws may be powerless to prevent the evil and disastrous results which may follow such acts of thoughtlessness.

A perfect practice for the avoidance of the possible dangers at present under consideration will consist of refusals to sign names to any papers until the contents, characters, and legal effects of the papers shall be thoroughly understood. The application of this safe and reliable method will evidently, in many cases, require the exercise of patience and labor in the reading and understanding of long, tedious legal documents. The generous disposition to economize the time of others, who may be in waiting, also militates against the careful employment of this practice. But there can be no other rule in the premises which will entirely answer the purpose. It must therefore be adopted as the general rule.

Experience will lead the way to an avoidance of a considerable part of the labor of reading and understanding documents and instruments which

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are to be signed by cultivating an aptitude for quickly appreciating the gists of documents, and for easily distinguishing the important parts, which must be clearly understood, from the unimportant parts, which may be more lightly glanced at.

There are many cases in which signatures are to be used merely for the purposes of attestation, or of witnessing the signatures of others. In such cases, there will be no necessity for understanding the characters and the contents of the documents, except that witnesses should be sure of the purposes of their signatures—that is, that their names are to be signed simply as witnesses to the execution of papers.

For this purpose, the printed or written words above and preceding the places for signatures in documents of various kinds, will often serve as sufficient guides. If immediately above or preceding the place for the signature there shall be such words as, "In witness whereof the parties to these presents have hereunto set their hands," or "Signed, New York, January—, 1910," or simply "Signed," the signature which is desired will evidently be that of a principal to the agreement. If the words above the place for the required signature shall be such as "Signed, sealed, and delivered in the presence of," or, "Sealed and delivered in the presence of," or "In presence of," or, "Witness," the signature will

evidently be that of a subscribing witness only.

The custom of signing blank or unfinished documents, in order to save time, and trusting that the documents will be properly filled out afterwards, is to be entirely avoided by all persons of ordinary prudence, for reasons which need not be mentioned here.

All such proceedings as the signing of indemnity bonds, the indorsing of notes for the accommodation of others, and the signing of agreements of surety for the purpose of guaranteeing the conduct of others are exceedingly dangerous. There may be cases in which such proceedings cannot be avoided, but in such cases the greatest care should be exercised and full understanding of the natures of the obligations should be had. Liability upon such agreements may endure for long periods—commonly twenty years—and not unfrequently the vicissitudes of the years will be easily sufficient to upset the calculations of the shrewdest observers.

POWERS OF ATTORNEY.—A power of attorney is an instrument which authorizes a person to act as agent (or attorney-in-fact, as distinguished from attorney-at-law or attorney-of-record) for the person who shall execute the power, either in a general manner (in which case the power of attorney is said to be a *general* one), or for

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some particular specified purpose (*special* power of attorney). The general object of powers of attorney is to enable agents to perform certain acts for their principals, which are beyond the ordinary authorities of agents (such as the execution of deeds), and which cannot be conveniently performed by the principals themselves.

Although powers of attorney are in general strictly construed by the law, the authority which is conferred by them will be construed to be ample for the purposes which are required. Unless specially limited by the powers, the authorities of attorneys-in-fact will be, for the purposes of the power, co-extensive with those of the principals themselves, although the making of powers of attorney will not deprive the principals of the authority to act for themselves.

The general principles of prudence and caution are, without doubt, against the advisability of executing powers of attorney, seeing that these principles strictly prohibit all unnecessary reliance upon others. Accordingly, the general rule will be to dispense entirely with all such delegations of authority.

But there are often occasions when, by reason of sickness, absence, or other disability, powers of attorney cannot be dispensed with. In all such cases care may well be taken that the authority which shall be conferred by powers of

attorney shall be strictly limited to the desired purposes; in other words, whenever it shall be possible, only the strictest kinds of special powers of attorney should be executed.

For the same reasons of precaution, when powers of attorney have been granted and the necessity for them shall have ceased to exist, they should be at once annulled by the filing or recording of revocations in the proper public offices of record. That revocations of powers of attorney shall be promptly placed on record in the proper offices is especially important, because of the fact that, although the powers may have been properly and legally revoked, as between principals and attorneys, the principals will still be bound to other parties, who shall have no knowledge of the revocations, by the unauthorized acts of the attorneys-in-fact, and the placing upon record of the revocations is declared by law to be constructive notice to all persons.

ADVISERS IN BUSINESS MATTERS.—The best rule, concerning advisers in matters of business, which can be devised, is that investors shall be their own advisers; which rule will permit of the fulfilling of another valuable rule—that investors shall keep their business affairs strictly to themselves. But the first-mentioned rule evidently presupposes a certain degree of business education and ability on the parts of investors,

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which, in fact, will not be possessed by every owner of property.

The rule with regard to advisers in business matters which will best suit investors who shall not possess the necessary business abilities may be stated in this manner:

Investors must make it their serious business to acquire the necessary business educations and abilities, seeking in the meantime only, and when such action shall be unavoidable, the advice of others who shall be honest, experienced, and successful.

For the purpose of aiding in the selection of such advisers, the following suggestions may be offered:

Those whose advice concerning the investment of property shall be sought must themselves be actual investors. For, evidently, successful manufacturers, farmers, business men, or professional men may be not at all familiar with the subject of investments. And the suggestion may be further amplified by the requirement that advisers shall be successful in the precise kind of investments concerning which their advice may be required. Investors differ materially in their preferences and practices. Thus, certain investors will invest their means only in purchases of real estate; others may prefer to own no real estate at all; and of the latter class, one investor may invest entirely in mortgages, while another

may be a firm believer in bonds and other forms of personal securities. Each may be experienced, sagacious, and successful in his own particular line of investment, and inexperienced or unsuccessful with other kinds of investment.

A general rule may be that advisers, in addition to the possession of the qualities which have been mentioned, must be without direct personal interest in the particular matters upon which their advice shall be sought—or, perhaps more accurately, that the conditions of advisers must continue to be the same whatever shall be the final determinations of the inquiring investors. And this rule will evidently prohibit direct business transactions with advisers unless it be to pay them for their services certain amounts which shall not be dependent upon the final acceptance of their suggestions.

Another suggestion, with regard to advisers in matters of business, may be that investors who shall not yet have attained the desired conditions which will enable them to act as their own advisers shall compare the advice which may be given them with the general methods and practices of the advisers, or with the special conduct of advisers in cases which are similar to the particular ones concerning which the advice has been given. If an adviser shall recommend certain courses of action which shall be plainly contrary to those which have been pursued by

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the adviser under similar conditions, the doubts of the seeker after advice may well be excited.

Finally, it may be remarked (by way of repeating a suggestion, the importance of which will warrant the repetition) that investors must strive without ceasing to fulfil speedily the conditions which will permit of the dispensing with all advice from others concerning their methods of investment, realizing clearly the fact that the sooner they shall be able to fulfil the required conditions, the sooner will they be removed from positions which may, and perhaps in the majority of cases will, lead to the making of bad investments and to consequent difficulties and loss of property.

LETTERS OF CREDIT.—A letter of credit is a letter by which a person (or corporation) agrees to repay money or credit given to a second person by a third person. It is *general*, when directed to any person to whom it may be presented, or *special*, when directed to a certain person, or corporation.

The form of a general letter of credit may be as follows:

We hereby agree to guarantee to any person advancing money or selling goods to A. B. of New York City, N. Y., not exceeding the sum

of \$——, the repayment thereof at the expiration of the credit which shall be given.

(Date.)

To C. D., etc.

(Signature).

The form of a special letter of credit may be as follows:

To Messrs. A. B., London, Eng.;

Gentlemen: We hereby agree to be responsible for goods sold or money advanced by you to C. D. of New York City, N. Y., to an aggregate amount not exceeding \$——.

(Date.)

(Signature.)

Letters of credit which are sold by the banks and directed to their correspondents at various points in foreign countries (sometimes called *circular notes*) are extensively used by travellers, the object being to provide them with funds at different points of travel, thus avoiding the necessity of carrying larger sums of money with them, and also avoiding the difficulty of exchanging funds into the moneys of the different countries that may be visited.

BILLS OF EXCHANGE AND PROMISSORY NOTES.—In another part of this work, a general suggestion concerning the avoidance of all obligations of the nature of bills of exchange and promissory notes has been made. And, although it is greatly to be desired that those for whose benefit and in-

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struction this work has been written shall be able at all times to accept the suggestion which has been mentioned, and to dispense entirely with the accepting, signing, and indorsing of such obligations, nevertheless it is deemed to be necessary that the subjects of bills of exchange and promissory notes shall receive at least general explanations here.

A bill of exchange is a written order, made by one party (the drawer) to a second party (the drawee) directing the second party to pay to a third party (the payee) a certain specified sum of money at a certain specified time.

A *foreign* bill of exchange is one the drawer and drawee of which reside in different countries, or in different States of the United States.

An *inland* bill of exchange is one the drawer and drawee of which reside in the same country, or in the same State of the United States.

The explanations and suggestions which are contained in Chapter II. of this work concerning indorsements, dishonoring, protest, etc., apply in all respects (with such modifications as the evident differences between bank checks, bills of exchange and promissory notes will suggest) to bills of exchange and promissory notes.

Bills of exchange may be made payable either *at sight* (on presentation to the drawees) or at specified times, which are later than their dates (as "thirty days after date," "sixty days after

sight," or, "on the first day of June, 1910"). In either case, bills of exchange must be presented to the drawees for payment upon the days of their maturities; in the latter case, they must be presented to the drawees as soon as such presentations shall be possible for *acceptance*, or the writing across the faces or backs of the bills by the drawees of the word "Accepted," their signatures, and the dates of the acceptances, the drawees then becoming the *acceptors*.

The usual form of a bill of exchange is as follows:

BOSTON, Feb. 1, 1910.

At sight (or days after sight, or days after date, or on the day of , 19) pay to the order of John Doe one thousand $\frac{00}{100}$ dollars and charge the same to the account of

RICHARD ROE.

\$1000. $\frac{00}{100}$.

TO MR. WILLIAM WHITE,
124 Narrow St., New York City.

Such a bill of exchange is said to be *negotiable* because, being made payable to the order of the payee, it may be transferred by him to others (and by them to third parties, and so on) by indorsement. If a bill of exchange is made payable to the payee personally, the words "the order of" before the payee's name, being omitted, the bill will be *non-negotiable*.

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The general reasons for and the purposes of bills of exchange may be indicated by an example in the following manner:

Suppose that John Doe, of No. 10 North East Street, Chicago, is indebted to Richard Roe of Boston in the sum of one thousand dollars, and that Richard Roe is indebted to William White in the same amount. If the two debtors shall be able to pay their debts, the regular and simplest method of doing so will be the sending of properly drawn checks by the debtors independently to their creditors. But, suppose that Richard Roe shall be unable to pay his debt to William White, unless he shall first collect the amount which is due to him from John Doe; that Roe's creditor shall be pressing in his demands for the payment of the debt; that Doe, being sure of receiving sufficient funds for the payment of his debt to Roe within sixty days, shall agree to accept a bill of exchange drawn by Roe (or that Roe shall decide to draw upon Doe for the amount of the debt, trusting that, rather than have his paper protested, Doe will accept and pay the bill of exchange); and that White shall agree to receive and collect the bill of exchange. In this case the bill of exchange will be as follows:

BOSTON, Feb. 1, 1910.

Sixty days after date pay to the order of William

White one thousand $\frac{00}{100}$ dollars and charge the same to the account of

RICHARD ROE.

\$1000. $\frac{00}{100}$.

TO MR. JOHN DOE,
10 North East Street, Chicago, Ill.

If the bill of exchange shall be properly accepted by Doe, and paid by him at maturity, the result of the transaction will be the discharging of the two debts (Doe to Roe and Roe to White) by the payment of the single bill of exchange. In other words, the two debts will have been *exchanged*.

From the understanding of the subject of bills of exchange, which should now be sufficiently clear, it will be evident that such methods will often be practically unavoidable to men who are actively engaged in certain regular businesses. It will be equally evident that occasions upon which the obligations and collections of investors may not be capable of arrangement by means of ordinary bank checks should seldom, if ever, arise.

A *promissory note* (or commonly a "note") is a written promise on the part of the drawer or maker to pay to the order of the payee (by name) a specified amount of money at a specified time. The usual form of a promissory note is as follows:

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NEW YORK, Feb. 1, 1910.

On demand (or days after date, or
months after date, or on the day of , 19)
I promise to pay to the order of John Doe, one
thousand $\frac{00}{100}$ dollars (with interest) for value re-
ceived.

RICHARD DOE.

\$1000. $\frac{00}{100}$.

Sometimes promissory notes specify also the places of payment,—for example, after the words “order of John Doe,” in the above form, may be inserted the words “at No. 100 Narrow St., New York City,” or “at the Twentieth National Bank of Boston.”

The principal purposes for the making of promissory notes are: on the parts of the makers, the borrowing of money and the postponing of the payment of debts until such times as shall be more convenient; on the parts of the payees, the obtaining of written evidences of debts, the obtaining of money by means of the discounting of the notes, and the obtaining of obligations which, although the makers may be irresponsible persons, may be paid in order to avoid the disadvantages which may result from the dishonoring and protesting of the notes.

Concerning the purposes of the makers of promissory notes, it may be said that they should have no application to regular and careful investors; a more dangerous practice than the fre-

quent signing and indorsing of notes can scarcely be mentioned. It is responsible for numberless and immense losses of property. Investors should therefore adopt an invariable rule to the effect that they will never sign or indorse promissory notes except when extraordinary circumstances shall render it necessary for them to do so. And if such unfortunate circumstances shall arise, investors must consider the probabilities that they will finally be compelled to pay notes which they have signed or indorsed as actual facts, and, by making careful memoranda of the amounts, dates, other signers' and indorsers' names, etc., and by arranging their affairs accordingly, they must be fully prepared to meet the obligations when they shall become due.

With regard to the purposes for which investors shall receive promissory notes from others, it may be remarked that in the majority of cases they will prove not to be practical, because of the irresponsibility and dishonesty of the makers and indorsers. It is doubtless very generally true that persons who will not pay their honest and lawful ordinary debts, will not pay the promissory notes upon which they shall be legally liable. It is evident that, if an investor shall discount a worthless note upon which he is the payee, the transaction will result in the payment of the note upon its maturity by the investor, and in the

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consequent loss of the discount, interest, and perhaps protest fees.

The practical rule with regard to the receiving of promissory notes by investors, therefore, appears to be that there are but two classes of cases in which notes will be of any service whatever; first, the class of cases in which there shall be no reasonable doubts concerning the ample responsibilities of the makers or indorsers; and second, the class in which the debts for which the notes shall be given will be difficult to establish in legal proceedings, and the notes may therefore be valuable as evidences of the debts, and for the purpose of otherwise simplifying and making more effective necessary proceedings at law.

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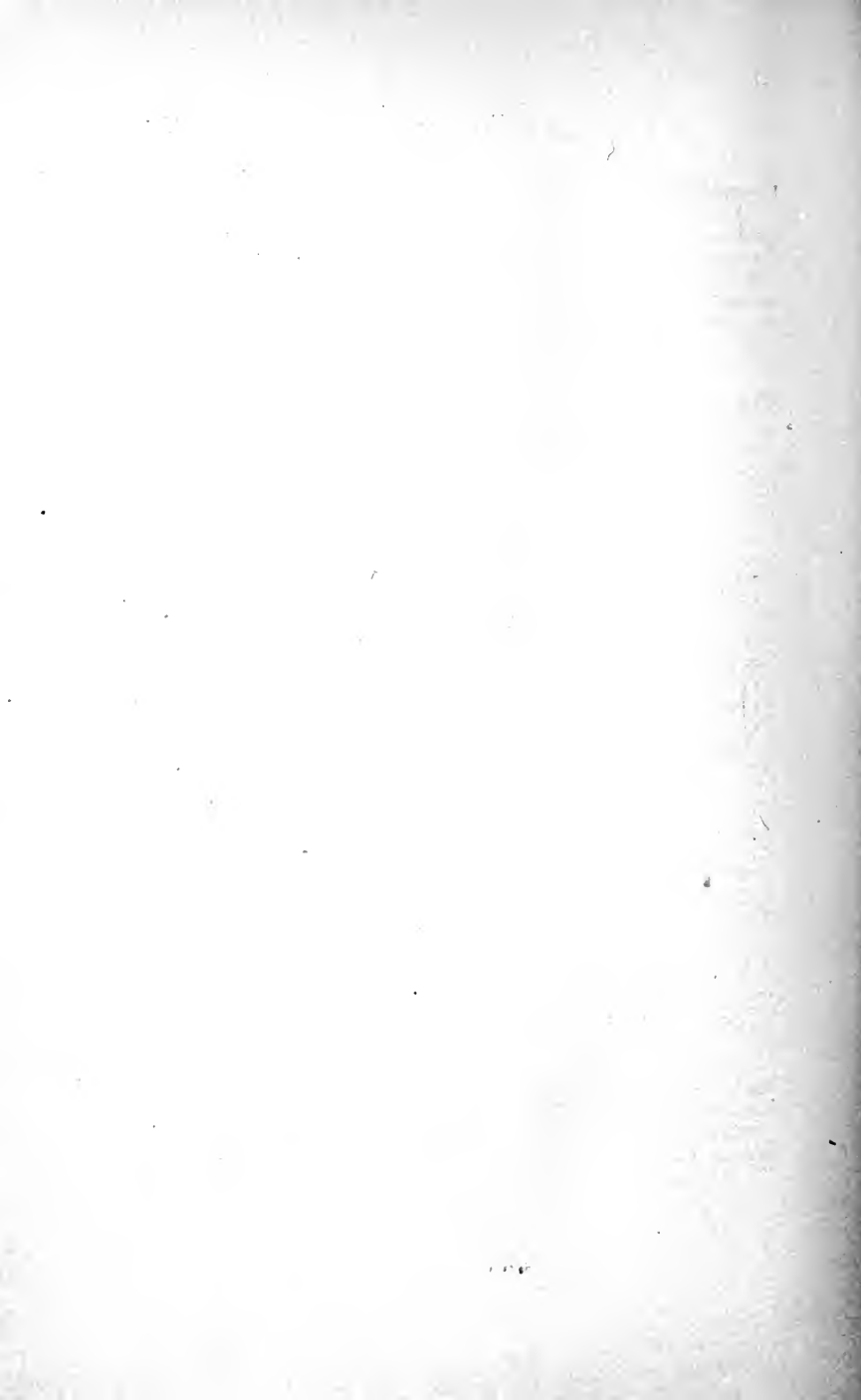
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